Memoranda:

TOUCHING THE

OATH

Ex officio,

Pretended Self-Accusation, and Canonical Purgation.

Together with some *NOTES* about the making of some New, and alteration and explanation of some Old, LAWS.

All most humbly submitted to the consideration of this PARLIAMENT.

By EDW. LAKE, *Philo-Monarcho-phil.*

Justitia Reip. Basis.

LONDON,
Printed for *R. Royston*, Bookseller to the Kings most Excellent Majesty, at the Angel in *Ivy-Lane*, 1662.

LIBRARY OF THE UNION THEOLOGICAL SEM... NEW YORK

To the Right Honourable

WILLIAM,

EARL of STRAFFORD,

Viſcount Wentworth, Baron Wentworth of Wentworth Woodhouſe, Newmarch, Overſley and Rabye,

Knight of the moſt Honourable Order of the GARTER.

MY LORD,

SUch hath been the power of Cuſtom for many Ages, that the Authors not onely of juſt Volumes, but of ſmall Treatiſes too, have ever been deſirous (I know not whether I may ſay, Ambitious) to dedicate them to ſome perſon of eminent quality and condition, as it were Clients to their Patrons, for the protecting and crediting them. Hereby the Authors have oftentimes gained their deſires, and the Patrons (eſpecially when the excellency of ſuch Books did de-

ſervedly acquire it) addition of honour and fame, and alſo propagated the continuance thereof to all poſterity. Numerous inſtances hereof might be given, but *Mecænas* may be *inſtar omnium*; which name of a Nobleman hath in a manner monopolized all noble Patrons, as Patron κατ' ἐξοχήν.

My Lord, I am far from having any ſuch opinion of this ſmall Treatiſe, (indeed not deſerving that name, being in great part but an epitomized Collection, and the reſt brief *Memoranda's* or Notes, rather to excite others to proceed upon that Subject, then to reſt on this :) though if by this, or any other Act of mine, any acceſſe of Honour could accrue to your Lordſhip, I hold my ſelf juſtly obliged humbly to preſent and tender it. But, my Lord, the full ſcope of my intention in this Model is, to the beſt of my Judgment, (which I alwayes ſubmit to better) and of my skill and power, to contribute ſomething tending to the further happineſſe and continuance of *Truth* and *Peace*, with *Juſtice* and *Honour*, in this *Church* and *State*, now by Gods bleſsing (to whom be all Honour and Praiſe) *ex poſt-liminio*, as it were, freed from Slavery and Tyranni-

cal

cal Oppreſsion, and reſtored to a capacity of their priſtine Beauty and Splendour, by the moſt happy Reſtauration of our moſt Gracious SOVERAIGN, whom God preſerve: This, I am ſure, (as my Heart prompts me to ſpeak) is my ſole intention, which aymes onely at the advancement of the Publick Good, and is not tainted with any drachm of private Intereſt. And, my Lord, knowing you do *Patrizare* that moſt honoured Father of yours, (whoſe Memory muſt never periſh, whoſe Loſſe this Church and State have too ſadly felt, but *Quis talia fando, &c.*) and that I may ſay as *Tertullian* (*de Reſurrectione carnis*) ſayes of the *Phœnix* raiſed out of the aſhes of his dead Sire, *Alter idem. Juſtitiæ & Honoris cultor ſincerus maximè*, as he was; that emboldens me to deſire your Lordſhips leave to prefix your Name, that this may be as an *Acceſſory* to follow its deſired *Principal*: And knowing you to be ſuch, I cannot but (as all, that know you as well as I, I am confident do) wiſh for the common good, that your Lordſhip were put *in ſtatum merendi*, into the ſphere of your proper Activity, that the Publick might reap the benefit thereof,

of, and that your Talent might be no longer (as it was whileſt Rebellious Uſurpation cauſed it, and did *obicem ponere*; now removed) wrapt up in a Napkin, nor your Candle hid under a Buſhel: So wiſhes, ſo prayes,

MY LORD,

Your Lordſhips

Weſtminſter 11.
Novemb. 1661.

much bounden and

moſt humble Servant,

EDWARD LAKE.

To the READER.

SOme account may perhaps be expected to be given of this ſmall endeavour, touching the paſſing that Act of clearing the doubt touching Coercive Power in Cauſes Eccleſiaſtical; wherein is that Proviſo *that* forbids all Eccleſiaſticall Judges to tender or adminiſter an Oath to any perſon *Ex Officio* or otherwiſe, or *Purgation*; whereby any perſon may confeſſe or accuſe himſelf, ſo as to make him or her liable to cenſure or puniſhment. *There were not a few perſons, unfriends at leaſt to the Diſcipline of the Church of* England, *that inſulted much (as is touched hereafter) and clamoured of the oppreſſion of the Eccleſiaſtical Courts, that hath been (ſay they) all the time before the paſſing of that Act, that took away that Oath: It was ſuitable to their intereſt to call that oppreſſion. When* Brutus *had murdered* Cæſar, *he called him Tyrant*; Ita enim appellari Cæſarem facto ejus expediebat, *ſaith* Velleius Paterculus, Hiſtor. lib. 2. *From the time of paſſing that Act, till within theſe few dayes, I expected from abler pens ſome Vindication of the proceedings of Eccleſiaſticall Courts, as touching ſuch* Oath *and* Canonical Purgation, *and the lawful and expedient uſe thereof before that Act; but none that I hear of attempting it: I looked upon the cauſe as a Derelict, took it up, and though (by the late iniquity of the times) I being too much ſeverall wayes unfurniſhed for ſuch a Work; yet, if but to give ſome ſatisfaction to indifferent men, and to wipe away at leaſt in part cauſeleſs calumny, and to ſtir up others to a further proſecution hereof; I conceived I might adventure upon this little Model or Plat-form, and perhaps more fitly at this time then another,*

ther, till a more complete Structure may be raiſed upon this ſubject, if more be needful; being ſo learnedly and fully handled, eſpecially by Doctor Coſens *ſometimes Dean of the* Arches, *and that late glory of our Church Doctor* Andrewes, *late Lord Biſhop of* Wincheſter. *That I ſhould eſcape from objections and cenſures too, I can ſcarce ſuppoſe, upon ſuch a Subject as this is, ingrateful to ſuch men as are* hæredes ex aſſe, *to the ancient oppoſers of it, and are inveighers againſt it; and thoſe that executed it,* quos læſerint, oderint, *alwayes excepting the Members of both Houſes of Parliament out of that number. Some too perhaps may diſlike my Dedication of it (though no Act more free then that) as not to ſome of my own profeſſion, or rather to my own moſt Learned and Pious Dioceſan, the Reverend Father in God, Doctor* Robert Sanderſon *Lord Biſhop of* Lincoln; *having relation to him by* Office *of* Truſt: *To him and them I ſhould rather have made my addreſſe then Dedication, and have herein conſulted with them, had time and convenience ſerved before I had attempted this, and not carry Owles to* Athens, *go about to give inſtruction to them, from whom I ſhould rather have received it. But as to that moſt Noble Perſon, to whom this is inſcribed, though according to his Birth and Education, his motion hath alwayes been in an higher Orbe and Contemplation of affaires of greater moment, more immediately enabling him to ſerve his King and Country: But (they by being ſomewhat more particularly concerned in a great part of the ſubject matter hereof) therefore by ſome may be ſuppoſed partiall and intereſſed. Yet even in the ſubject matter of theſe* Memoranda *he is not unverſed, if not more particularly; yet as comprehended in that generality of Learning and Knowledge, whereto he hath from his younger yeares been habituated to, at the feet of ſuch a States-man, as was his*

moſt

moſt accompliſhed Father, and ſuch Inſtructors as he by his eſpecial and moſt diſcerning choice appointed him; and all this perfected up by moſt advantagious acquiſition by travel and reſidence in forraign parts, amongſt thoſe who are juſtly ranked in the number of the moſt Civil, Learned, and Wiſe in Europe, *and ſo conſequently in the Univerſe; and ſo need not mine or others inſtruction herein more then others, not profeſſed Lawyers. But all that is compriſed in this Model, both in the* Memoranda's *and the* Notes, *ſomewhat grounded upon ſome yeares experience I have had, and tending, as before, at leaſt in my well-meaning opinion to the publick good ſolely; is ſo moſt humbly offered to conſideration, if by thoſe in Authority it be thought fit. He is, I conceive, very fit to further and advance this, both in conſideration of his abilities, and his being impowred as others of his noble rank and quality in the Supreme Judicatory of this Kingdom; and by his own Genius and propenſity, willing and deſirous to effect any thing ayming that way, as leſs cannot be expected from the Son of ſuch a Father, and Husband of ſuch a wife, his moſt noble and moſt vertuous Lady, (a pair in reſpect of the mutual parity of their moſt intenſe conjugal affection, and parentizing love to Loyalty, Juſtice and Honour, hereditary vertues flowing in their veines from their moſt Noble Loyally, Gloriouſly Acting and Suffering Parents; not eaſily parallel'd) and therefore I have not ſo much Dedicated this to him, as ſupplicated his effectual adminicular hand hereto.*

Upon the whole matter as touching my ſelf, this Modell, as alſo, if not more eſpecially the Notes *ſubjoyn'd; I having had no ſmall ſhare of Sufferings in the time of exilement of Monarch and Monarchy, and ſo conſequently of joy and gladneſs in the happy Reſtauration of both; in my due gratitude and obligation, both by tie of natural duty,*

and of God and Mans Laws, have made it part of my ſtudy to endeavour to contribute my well-meaning mite to the publick good, and the prevention of ſuch miſeries for the future, as too lately we have had too ſad experience of. Inſtances might be given of many that have publiſhed their endeavours heretofore to ſuch publick ends, which have not proved ineffectual, and more eſpecially Mr. Spencer *touching the State of* Ireland *in Queen* Elizabeths *time. If in any meaſure never ſo remote, they may any whit help to attain to that end they aime at; I ſhall be glad of it, and with that true candour ſubmiſſively offering them, always proteſting as I now do, that if there be any thing herein, contrary to Gods word directly or indirectly, or to His Majeſties Prerogative, or the known Laws of the Land, Eccleſiaſtical or Temporal, or the politick Government either in Church or State, or which may give juſt offence: I do hereby abſolutely retract it, as no wayes by me intended or thought of, wiſhing this ſmall taſte may ſtir up others (more able) to make a further and better progreſs in this kind.*

Anno

An Act for explanation of a Clauſe contained in an Act of Parliament made in the ſeventeenth year of the late King *Charles*, entituled, *An Act for repeal of a branch of a Statute* primo Elizabethæ, *concerning Commiſſioners for Cauſes Eccleſiaſtical.*

WHereas in an Act of Parliament made in the ſeventeenth year of the late King Charles, entituled, An Act for repeal of a branch of a Statute, primo Elizabethæ, concerning Commiſſioners for Cauſes Eccleſiaſtical; it is (amongſt other things) enacted, That no Archbiſhop, Biſhop, nor Vicar General, nor any Chancellor, nor Commiſſary of any Archbiſhop, Biſhop, or Vicar General, nor any Ordinary whatſoever, nor any other Spiritual or Eccleſiaſtical Judge, Officer, or Miniſter of Juſtice, nor any other perſon or perſons whatſoever, exerciſing Spiritual or Eccleſiaſtical Power, Authority or Juriſdiction, by any Grant, Licenſe or Commiſſion of the Kings Majeſty, his Heirs or Succeſſors, or by any Power or Authority derived from the King, his Heirs or Succeſſors, or otherwiſe, ſhall from and after the firſt day of Auguſt, (which then ſhall be in the year of our Lord God, One thouſand ſix hundred forty one) award, impoſe or inflict any Pain, Penalty, Fine, Amercement, Impriſonment, or other corporal puniſhment upon any of the Kings Subjects, for any Contempt, Miſdemeanour, Crime, Offence, matter or thing whatſoever, belonging to Spiritual or Eccleſiaſtical Cogniſance or Juriſdiction, whereupon ſome doubt hath been made, that all ordinary Power of Coertion and Proceedings in Cauſes Eccleſiaſtical were taken away, whereby the ordinary courſe of Juſtice in Cauſes Eccleſiaſtical hath been obſtructed: Be it therefore declared and Enacted by the Kings moſt excellent Majeſty, by and with the advice and conſent of the Lords and Commons in this preſent Parliament aſſembled, and by the Authority thereof, That neither the ſaid Act, nor any thing

therein contained, doth or shall take away any ordinary Power or Authority from any of the said Archbishops, Bishops, or any other person or persons named as aforesaid, but that they and every of them exercising Ecclesiastical Jurisdiction, may proceed, determine, sentence, execute and exercise all manner of Ecclesiastical Jurisdiction, and all Censures and Coertions appertaining and belonging to the same, before the making of the Act before recited, in all causes and matters belonging to Ecclesiastical Jurisdiction, according to the Kings Majesties Ecclesiastical Laws used and practised in this Realm, in as ample manner and form as they did, and might lawfully have done before the making of the said Act.

And be it further enacted by the Authority aforesaid, that the afore recited Act of decimo septimo Caroli, and all the matters and clauses therein contained (excepting what concerns the High Commission Court, or the new erection of some such like Court by Commission) shall be and is hereby repealed to all intents and purposes whatsoever: Any thing, clause or sentence in the said Act contained to the contrary notwithstanding.

Provided always, and it is hereby enacted, That neither this Act, nor any thing herein contained, shall extend or be construed to revive or give force to the said branch of the said Statute, made in the said first year of the Reign of the said late Queen Elizabeth, mentioned in the said Act of Parliament, made in the said seventeenth year of the Reign of the said King Charles; but that the said branch of the said Statute, made in the said first year of the Reign of the said Queen Elizabeth, shall stand and be repealed in such sort, as if this Act had never been made.

Provided also, and it is hereby further enacted, that it shall not be lawful for any Archbishop, Bishop, Vicar General, Chancellor, Commissary, or any other Spiritual or Ecclesiastical Judge, Officer or Minister, or any other person having or exercising Spiritual or Ecclesiastical Jurisdiction, to tender or administer unto any person whatsoever, the Oath usually called the Oath Ex officio, or any other Oath whereby such person to whom the same is tendered or administred, may be charged

charged or compelled to confesse, or accuse, or to purge him or her self, of any criminall matter or thing, whereby he or she may be lyable to any censure or punishment: any thing in this Statute, or any other Law, Custom or Usage heretofore to the contrary hereof, in any wise notwithstanding.

Provided alwayes, that this Act, or any thing therein contained, shall not extend or be construed to extend to give unto any Archbishop, Bishop, or any other Spirituall or Ecclesiasticall Judge, Officer, or other person or persons aforesaid, any power or authority to exercise, execute, inflict or determine any Ecclesiasticall Jurisdiction, Censure or Coertion, which they might not by Law have done before the year of our Lord, One thousand five hundred thirty and nine, nor to abridge or diminish the Kings Majesties Supremacy in Ecclesiasticall matters and affairs, nor to confirm the Canons made in the year One thousand five hundred and forty, nor any of them, nor any other Ecclesiasticall Laws or Canons not formerly confirmed, allowed or enacted by Parliament, or by the established Laws of the Land, as they stood in the year of the Lord One thousand five hundred thirty and nine.

The

The Contents of the Chapters.

Chap. I.

THe endeavours of the Innovators to change the course of Ecclesiastical proceedings. That stupendious Fanatick Hackett *his fearful end.* Mr. Cambdens *judgment touching the Innovators. Their perseverance in their design of Innovation in King* James *his time and afterwards. The pretended taking away the Coercive power from the Ecclesiastical Courts how gained, what use was made of it by the Innovators, and how they boasted of their benefit by it. Two passages in the Long Parliament touching two Inconformists.* Page 1.

Chap. II.

The two Proviso's in the late Act that takes away the doubt touching Coercive power in Ecclesiastical Courts. Dr. Cosens *Apologie for sundry proceedings by Jurisdiction Ecclesiastical. That groundless Opinion,* That a several Royal assent to the executing of every particular Canon is required, *is confuted. The validity of the Ecclesiastical Laws. The clamours of Inconformists, Innovators and Fanaticks, against the putting of Ecclesiastical Laws in execution, though the Ecclesiastical Officers and Ministers are by Act of Parliament severely commanded to do it.* p. 10.

Chap. III.

The Heads of the several Chapters in that Apologie of Doctor Cosens. *Part* 1. p. 27.

Chap. IV.

By the late Act the manner of proceeding in Ecclesiastical Courts is not altered, but left as it was. A summary relation of what Dr. Cosens *in his Apologie hath asserted and made good by Gods Word, the practice of the Primitive Christians, the opinion of the Fathers, the Laws Canon and Civil, and the Laws of the Land allowing and warranting them. The like practice at Common Law, and at* Geneva *and other places, pretending strict Reformation.* p. 24.

Chap. V.

That it is consonant to Gods Word to give such an Oath Ex officio, *or otherwise.* p. 28.

Chap.

Chap. VI.

That the opinion and practice of the Primitive Christians, and the Fathers of the Church, was to administer such Oath Ex officio, *or upon Accusation, and for Purgation Canonical, with the practice at* Geneva. p.33.

Chap. VII.

That the like practice touching these Oaths, is and was in all Forreign Christian Nations, and other Nations not Christian, guided onely by the Light of Nature. p.37.

Chap. VIII.

That by the known Laws of this Land, the Ecclesiastical Judges were so warranted and commanded to give that Oath, according to the Canon and Ecclesiastical Laws. p.39.

Chap. IX.

That Oaths administred to parties touching matters damageable, criminal and penal to themselves, are urged and required by Temporal Courts, and by the Laws of the Realm. p.41.

Chap. X.

The inconveniences and hurt that probably may follow, by the forbidding the ministring of an Oath Ex officio, *or any other Oath, whereby such person, to whom the same is tendered or administred, may be charged or compelled to confess or accuse, or to purge him or her self of any criminal matter or thing, whereby he or she may be lyable to any censure or punishment. Praise of the Civil Laws. Civilians first, and last, and greatest Sufferers. Amity 'twixt both Robes. His Majesties and the Lord Chancellors favours to Civilians.*

Touching

TOUCHING
The OATH *EX OFFICIO*, AND CANONICAL PURGATION.

CHAP. I.

The endeavours of the Innovators to change the courſe of Eccleſiaſticall proceedings. That ſtupendious Fanatick Hackett *his fearful end. Mr.* Cambdens *judgement touching the Innovators. Their perſeverance in their deſign of Innovation in King* James *his time and afterwards. The pretended taking away the coercive power from the Eccleſiaſticall Courts how gained, what uſe was made of it by the Innovators, and how they boaſted of their benefit by it. Two paſſages in the Long-Parliament, touching two Inconformiſts.*

FOR many years together now laſt paſt, ſome men have very earneſtly endeavoured to have taken away, or at leaſtwiſe have much alter'd the proceedings in the Eccleſiacal Courts of this Kingdom, uſed according to His Majeſties Eccleſiaſtical Laws, touching the Adminiſtration of the Oath *ex officio*, and at the inſtance or promotion of a party accuſing, or ſtirring up the Judges Office; to any party accus'd, or call'd, or enquired after by the Judge Eccleſiaſticall *ex officio*, or otherwiſe; whereby, as they phraſe it, he muſt confeſs or accuſe himſelf, and ſo render himſelf liable to penalty or cenſure. In the Reign of Queen *Elizabeth* they proſecuted it vehemently if not violently, and

as before that time some Anabaptists in *Germany* had done the like in such Cases. Of their practises that way here, that most Faithful, Learned, and Grave Historion of ours, Mr. *Cambden* gives us an account in his Annals of the Reign of Queen *Elizabeth*, printed at *Leyden* in the Low-Countries 1625. It is in the year 1590. After he hath there given a Relation of that stupendious and blasphemous Fanatick *Hacket*, *of his beginning, how illiterate, insolent, fierce, and revengeful he was, that meeting one that had been his School-Master an ingenuous person, under a colour of embracing him bit off his Nose, and the poor miserable deformed man, beseeching him to give it him again, that whilst it was green and fresh he might sow it again to his face; he would not do it, but like a dogge swallowed it down; and so averse was he to all piety, that, that heavenly Doctrine he had heard in Sermons, he made sport with it, with his pot-Companions on the Ale-benches. Afterwards when he had prodigally wasted his Estate which he had got with a Widow whom he had marryed; on a sudain he claps on the vizard of most specious sanctity, is wholly taken up in hearing Sermons, reading the Scriptures, and pretending to I know not what, heavenly Revelations, and counterfeiting an extraordinary calling, insinuated himself into the acquaintance of severall Divines, that with inflamed Zeal, labour'd to bring in the Presbyteriall Discipline of the Church of* Geneva, *into the Church of* England, *amongst whom was one* Wigginton *a Minister, and if ever any, an haire-brain'd one, and a contemner of Magistrates.* Then he goes on and relates *Hacketts* and his Complices most horrid and ridiculous madness, such as had not such a worthy Author and others related it, we might now doubt of the truth of it, as the next Age will probably do of our Modern Fanaticks late pranks: there he relates his fearful blasphemous speeches, as he expired and was turn'd off the Gallowes, upon whom that pious and Learned Author gives this grave censure, *Ita hostis humani generis, dementat quos sanctitatem simulare, & ad sobrietatem nolle sapere deprehendit.* Thus the enemy of Mankinde infatuates those whom he perceives to be counterfeitors of holiness, and will not be wise with sobriety.

And then after a line or two upon *Arthington* and *Coppinger*, two

two of *Hacketts* Complices he goes on thus. "Nec hii ſo-
"li, ſed etiam alii, qui receptam in Eccleſia Anglicana Do-
"ctrinam, Epiſcoporum vocationem damnando, & Præſules
"contumelioſè calumniando, hactenus fruſtra impugnarant.
"Nunc pertractis in eorum partes nonullis, juris Anglici pe-
"ritis, in eorum Juriſdictionem & delegatam à Regina in
"Eccleſiaſticis cauſis authoritatem, ut prorſus injuſtam, &
"linguas & calamos ſtrinxerunt; declamando ubique, etiam
"libris publicatis, homines contra Regni leges, in Foris Ec-
"cleſiaſticis indignè opprimi. Reginam ejuſmodi authori-
"tatem ex jure non poſſe delegare, nec alios exercere delega-
"tam. Fora illa non poſſe a reo Jusjurandum Ex Officio exi-
"gere, cum Nemo ſeipſum accuſare teneatur. Jusjurandum
"illud homines ad ſui condemnationem cum ignominioſa
"confuſione, vel in ſpontaneum perjurium cum animarum
"exitio præcipitare. Præterea de aliis, quam matrimoniali-
"bus cauſis, non debere cognoſcere, ex hujuſmodi Veteri
"Reſcripto.

Mandamus Vice-Comiti Comitatuum noſtrorum S. N. *&c. quod non permittat, quod aliqui in Balliva ſua in aliquibus locis conveniant, ad aliquas Recognitiones, per ſacramenta ſua faciendas, niſi in cauſis Matrimonialibus & Teſtamentariis.*

"Contra, Juris Eccleſiaſtici Profeſſores Regiam in Eccle-
"ſiaſticis authoritatem propugnarunt utique Parlamentariâ
"Authoritate in Regina inveſtitam. Hanc oppugnare, nihil
"aliud eſſe, quam in Majeſtatem irruere & Sacro Sanctæ
"Prærogativæ violato obſequii juramento inſultare. Fora
"Eccleſiaſtica de aliis quam Matrimonialibus & Teſtamen-
"tariis poſſe cognoſcere, ex ſtatuto *Circumſpecte agatis* &
"*Articulis Cleri* ſub Edvardo Primo, docuerunt. Reſcrip-
"tum ſive legem illam prolatam, ſuſpectam eſſe, quia tem-
"poris eſt incerti, & variæ Lectionis. Alibi enim legi. *Ad*
"*recognitiones vel ſacramenta præſtanda. Recognitionem* item *fa-*
"*cere* non ſignificare, teſtimonium perhibere, vel reſpondere
"in jure, ſed *debitum agnoſcere, & fateri vel placita* de Catalo-
"gis vel debitis tenere. Juramentum ex officio, in foris illis,
"ut in aliis, ex omni memoria fuiſſe exactum, ad ſimoniam,
"adulterium & alia tenebrarum opera rimanda, præſertim

" cum *Inſinuatio*, ut loquuntur, fuerit clamoſa. Et quamvis
" nemo teneatur ſeipſum prodere, tamen per famam prodi-
" tum teneri oſtendere, utrum poſſit ſuam innocentiam de-
" fendere, & ſeipſum purgare, quandoquidem pœnitentia
" impoſita, non ſit pœna ſed medicina ad peccatores curan-
" dos, alios à peccato deterrendos, & ſcandalum tollendum,
" juxta illud in Sacris Literis. *Pro anima tua ne confundaris di-
cere verum. Eſt enim confuſio adducens peccatum, & confuſio ad-
ducens gloriam & gratiam.* " Sed quid de hiis immoror, quum
" diſſertationes *Richardi Coſini* Legum Doctoris & *Johannis
" Morriſii* & *Lancelotti Andrewes* eruditæ hac de re utrinque
" præſtent? Regina haud ignara ſuam authoritatem per
" Epiſcoporum latera in hoc negotio peti, adverſantium im-
" petus tacite infregit, & Eccleſiaſticam Juriſdictionem
" illæſam conſervavit. That is, Not onely theſe, (ſpeaking
" of *Hackett* and his Complices) but others alſo, who had hi-
" therto, though in vain, impugned the received Diſcipline
" of the Church of *England*, by condemning the calling of
" Biſhops, and contumelioufly ſlandering the Prælates;
" having now drawn into their party ſome Common-
" Lawyers, ſharpned both their Tongues and Pens againſt
" their Juriſdiction, and the Authority which the Queen
" delegated in Eccleſiaſticall Cauſes as altogether unjuſt, de-
" claiming every where, even in Books publiſhed, that men
" were unworthily oppreſſed in the Eccleſiaſticall Courts,
" contrary to the Lawes of the Kingdom. That the Queen
" could not by Law delegate ſuch kinde of Authority, nor
" others to whom it was delegated could exerciſe it. That
" theſe Courts could not require the Oath *ex officio* from the
" defendent party, when as no man is bound to accuſe him-
" ſelf. That Oath precipitates men to condemn themſelves
" with ignominious confuſion, or into wilful perjury to the
" deſtruction of their Souls. Beſides, they ought not to hold
" cognizance of any other cauſes then Matrimoniall and
" Teſtamentary, according to that old Mandate or Reſcript,
We command our Sheriff of our Counties of S. N. *&c. that they
ſuffer not any in their Baliwe to come together in any places, to make
any Recognizances upon their Oaths, but in Matrimoniall and Te-*

ſtamentary

ſtamentary cauſes. "On the other ſide the Profeſſors of the "Eccleſiaſticall Lawes maintain'd, the Royall Authority in "Cauſes Eccleſiaſticall as veſted in the Queen by Authority "of Parliament. To oppoſe this, was nothing elſe then to "offer violence to Royall Majeſty, and violating the Oath "of obedience, to inſult over the Sacred Prerogative Royall. "The Eccleſiaſticall Courts may hold cognizance of other "Cauſes, then Matrimoniall and Teſtamentary, by the Sta-"tute of *Circumſpecte agatis* and *Articuli Cleri*, in the time of "*Edward* the firſt as they made it appeare. That Reſcript or "Law which they produc'd was ſuſpected, becauſe it was "incertain for the time, and is variouſly read. Elſewhere I "have read it, *To perform Recogniſances and Oaths*, and to make "recognition or recognizance, doth not ſignifie to give te-"ſtimony, or to anſwer in Law, but to acknowledge and "confeſſe a debt, or to hold plea of Inventaries or Debts. "That the Oath *ex officio* hath time out of mind been given "in theſe Courts as in others, to ſift out Simonie, Adultery, "and other works of darkneſs; eſpecially, when the Infi-"nuation as they call it, becomes loude. *And though no man is bound to betray himſelf, yet being betrayed by fame, he is bound to ſhew himſelf whether he can defend his innocence and purge himſelf, ſeeing the penance enjoyned is not a puniſhment, but a medicine to cure ſinners, and to deter others from ſinning, and to take away ſcandall*, according to that in Scripture, *Be not confounded in ſpeaking truth for thy ſouls ſake, for there is a confuſion that brings ſin, and there is a confuſion that brings glory and grace.* "But what "do I dwelling upon theſe things, when the Learned diſcour-"ſes hereupon on both ſides are extant of *Richard Coſin* Do-"ctor of the Lawes, and *John Morris*, and *Lancelot Andrewes?* "The Queen not ignorant that Her Authority was in this "buſineſs ſtruck at through the ſides of the Biſhops, tacitely "cruſh'd the violence of the Adverſaries, and conſerv'd the "Eccleſiaſticall Juriſdiction inviolate. Thus in a few words he ſummes up part of the marrow of theſe Learned diſſertations, and gives his ſound judgement thereupon. But ſtill they went on in their deſign, in which I believe they will ever be found immoveable. We have had ſufficient expe-

rience

rience that way at what they aime, and that there is no hope of bending without breaking too. In their admonition to the Parliament in that Queens Reign they tell us, to this effect at leaſt, that if they cannot have what they deſire by fair meanes, they will have it by a way ſhall make our hearts ake; and I think they have indifferently well made their words good. Yet bleſſed be God, we are delivered again from them, God give us care to beware of them, and not to fall again into their ſnares by thoſe bleſſed Titles of Mercy and Moderation, heavenly good ſurely, if rightly applied. Let us but contemplate our freſh miſeries, and the murther of our bleſſed King and Martyr, King *Charles* the Firſt, and his Εἰκὼν Βασιλικὴ, 'tis well to be hoped 'twill prove as much or more effectual, then the Pages *Memento* to *Philip* of *Macedon* in another caſe. Theſe men, for they were all of the ſame Leaven, ſtill perſiſted in their deſign, all along the Reign of Queen *Elizabeth*, and upon King *James* his coming in, thinking upon that change to have wrought ſomething extraordinary upon a Prince that had a great acceſs of Dominion, and probably at his entrance would endeavour to ſatisfie all or moſt, ſo far as with reaſon it could be expected, and to ingratiate himſelf as far as fitting with his new Subjects. But it was our happineſs, though his trouble and vexation, that he was well acquainted with the factious and ſeditious humours of that gang in *Scotland*, (with whom and ours here of the ſame mould, I believe ever was and will be a correſpondence and co-operation.) *Ex viridi obſervantia* this is too demonſtrable. They then ſet upon King *James* with their moſt humble Petition, called *The Lincoln-ſhire Miniſters Petition*, perhaps *denominatio à majori*; it was a complication of many parts: there they deſire favour for tender Conſciences, and thereupon was the Conference at *Hampton-Court* granted, where their Reaſons were, as it were, *brayed in a Mortar*, and they or moſt of them ſeem'd ſatisfied; but many of them at leaſt, ſoon returned to their vomit. In that Petition they promiſe all obedience, and profeſs they hold it contrary to Gods Word, and the practice of the Primitive Chriſtians, to reſiſt the Prince; or to get Reformation by force or violence.

violence. To this effect they ſupplicate and hold forth; yet I believe it may be prov'd, that ſome of theſe individual perſons in that Petition, adhered expreſly to the late Rebels againſt His Majeſty, if they were not actually in Arms againſt him, as moſt if not all of their Opinions were. How they crept in, or rather marched on furiouſly, though ſlily in the the late Kings time, till they had weav'd up their Web to their deſire: we have ſeen and ſadly felt. When the High-Commiſſion and Star-Chamber were taken away, a great point was gain'd: To ſpeak of nothing elſe but the ſubject upon which I am. Yet by the way it is obſervable, that many, if not moſt, moderate men are of opinion, that the Government will not be well ſettled, till both theſe Courts, though happily in many particulars altered and regulated. or ἀνάλογόν τι, ſome other Courts much like them, be eſtabliſhed; where extraordinary crimes and perſons may be ordered: and in the former, the High-Commiſſion, the ſhifting of criminous perſons from one Dioceſe to another may be met with. It was no ſmall part of their deſign, to trample upon Eccleſiaſtical Juriſdiction, and to take away the coercive power, and to make it precarious and ridiculous: as they would interpret that Statute, which, if credible relations be true, was but ſtrangely got; inſomuch that a great leading Member in the Houſe of Commons then in that long Parliament, cryed out, *Digitus Dei fuit in eo*; that though it were not intended, yet the words would bear it, which he rejoyced at; though many, and not of the leaſt, able Lawyers in the Kingdom were not of his opinion. That Coercive power, for no other have the Eccleſiaſtick Courts, (except *Suſpenſion*, a degree below it, which amounts but to a ſmall coercion to refractory perſons, in regard it goes no further, the ſecular arme cannot be called upon that;) that, I ſay, that coercive power is *Excommunication*. That is the power of the Keyes, how far that power may be ſtaid, retarded or forborn, I intend not to diſpute; but that it ſhall be totally taken away from the Church, *Quaſi non eſſet Deus in cœlis*, that ſurely is not to be believed, that it can be done by any power under Heaven. But that taking away that coercive power

from

from the Eccleſiaſtical Courts, as they interpreted it, (and they knew they had *argumentum à fortiori* to maintain it) did not a little further and heighten their deſign. At the time of their raiſing their Militia againſt the late King, a perſon of no mean quality at a great Aſſembly made his Harangue to the people, (as I heard it from a very credible perſon, who ſaid he was then and there preſent and heard it) and then and there enumerated the many great bleſſings this Nation had received from that bleſſed Parliament, (as he call'd it) That Ship-money was taken away, and the Star-Chamber was taken away, and the High-Commiſſion was taken away, and the Spiritual Courts too are taken away: A man could not meddle with a Wench, (his expreſſion was otherwiſe, which I am not willing to mention) but he muſt be queſtion'd: *Hinc illæ lacrymæ.* Indeed that was a great Eye-ſore. Delinquents never love the Judges that puniſh them.

At laus ſumma, viris diſplicuiſſe malis.

And this did not a little advantage the cauſe they had then in hand, very many perſons that had been juſtly queſtion'd in theſe Courts flocking in to their colours. But I take no delight to rekon up theſe ſtrange paſſages, (to call them no worſe) which were not a few when that ſtorm was in raiſing, which afterwards ſhaked all the corners of the Land. Two onely which concerned Eccleſiaſtical proceedings, (to meddle with no other of higher nature, that the world rang of, and I would the memory of them could be perpetually aboliſhed) I ſhall briefly touch, which amongſt others were theſe: A grave and able Civilian, and then a Member of the Houſe of Commons, was accuſed by an Inconformiſt, that he had excommunicated him, for not kneeling at the Communion when he received. I was preſent, and ſaw and heard it, and to my beſt remembrance it was for not kneeling at the Communion, at leaſt it was for not performing ſome other Ceremony; ſo that as to this matter 'tis all one. The Civilian being called up to a Committee of the Lords, then in the Long Parliament, out of the Houſe of Commons, to anſwer

it,

it. By his Counſel he deſir'd time to ſend into the Countrey, where it was pretended to be done, to know whether he had done any ſuch thing; it being impoſſible for him to remember every particular that he had done in his Juriſdiction, and that particular, he ſaid, he did not remember. He had time given, and informed himſelf thereof; and at the next appointed time of his appearance, by his Counſel, pleaded that he had done no ſuch thing, as he was accuſed of. The Accuſer ſaid, then it was done by his Deputy or Surrogate: That was denyed too. Then he ſaid, he was ſure it was done by the Spiritual Court; and ſo it was, but not by any Spiritual Court where that Civilian had to do: Then the Civilian pleaded, that if he had done that whereof he was accuſed, he doubted not but he could have juſtified it: but ſince it appears that he was unjuſtly accus'd, and reap'd ſome diſcredit by being thus queſtion'd, and had been put to trouble and charge thereabouts, he deſired reparation and charges: which by many of the Lords was yielded to, yet by the major part it was carried, that he ought not to have it; and the reaſon was rendred, becauſe it would deter others from complaining.

Si ſatis eſt accuſaſſe, quis erit innocens?

Nay, how far may it tend to the ruine of ſome, if ſome men be maliciouſly ſet upon them, to multiply accuſations againſt them?

The other was: Another Inconformiſt complaining of his being queſtion'd in the Eccleſiaſtical Courts for his Inconformity: In defence it was alledged againſt him and proved, that he had ſaid, *He would as ſoon bow at the name of* Judas, *as at the Name of* JESUS: and I diligently enquir'd, but never heard he was puniſh'd for it. But would there had been no more then theſe, though theſe are too much: Would ſome had not gloried, had not triumphed in their ſhame.

Bella geri placuit nullos habitura triumphos.

Chap. II.

The two Proviſo's in the late Act that takes away the doubt touching Coercive power in Eccleſiaſtical Courts. Dr. Coſens *Apology for ſundry proceedings by Juriſdiction Eccleſiaſtical. That groundleſs Opinion,* That a ſeveral Royal aſſent to the executing of every particular Canon is requir'd, *is confuted. The validity of the Eccleſiaſtical Laws. The clamours of Inconformiſts, Innovators and Fanaticks, againſt the putting of Eccleſiaſtical Laws in execution, though the Eccleſiaſtical Officers and Miniſters are by Act of Parliament ſeverely commanded to do it.*

BY the late Act before mentioned, where the *Doubt* (ſo it is called there) about the Coercive power in Eccleſiaſtical Courts is clear'd and taken away.

One *Proviſo* is, *That that Act, nor any thing therein conteined, ſhall extend, or be conſtrued to extend, to give unto any Archbiſhop or Biſhop, or any other Spiritual or Eccleſiaſtical Judge, &c. any power or authority to exerciſe, &c.*

If any be peccant that way, it ought to be amended.

Another *Proviſo forbids any Archbiſhop, Biſhop, &c. to tender or adminiſter unto any perſon the Oath uſually called the Oath* Ex officio, *or any other Oath, whereby ſuch perſon, to whom the ſame is tendred or adminiſtred, may be charged or compelled to confeſs or accuſe, or to purge him or her ſelf of any criminal matter or thing, whereby he or ſhe may be lyable to any cenſure or puniſhment.*

This being now forbidden by Act of Parliament, every Subject ought to give obedience therein: But ſome now inſulting and upbraiding the Eccleſiaſtical Courts, that all this while they have oppreſſed the Subject, with that proceeding which the Parliament hath taken away, renewing the old cry in Queen *Elizabeths* time, and ever ſince againſt ſuch proceedings, which never till now (I alwayes except what was done in the late times of uſurped government) were legally prohibited.

bited. Though I am far from queſtioning the reaſons whereupon that Act paſſed, but do humbly ſubmit to it both in word and practice; yet I hope it will be allowed to make ſome defence againſt ſuch perſons, as ſo tax ſuch proceedings before the paſſing of this Act. And herein I ſhall follow that moſt able Civilian, *Richard Coſin* Doctor of the Laws, and Dean of the Arches, in that his *Apology for ſundry proceedings by Juriſdiction Eccleſiaſtical, &c.* Mr. *Cambden*, as before, mentions him with honour, as ſurely he well deſerv'd, and that work of his, if nothing elſe, evinces it. Mr. *Swinburn* in that Work of his of *Laſt Wills and Teſtaments*, printed at *London* for the Company of Stationers, 1611. in the firſt part, ſect. 6. numb. 8. fol. 17. writes thus of him, and of that Work of his, that Apology: *I find*, ſaith he, *written by that learned and no leſs religious man, Doctor* Coſins (*as I take it*) *in that worthy Work entituled, An Apology for ſundry proceedings by Juriſdiction Eccleſiaſtical, &c.* and ſo he goes on. Upon this ſubject he hath written ſo fully, that, I believe, little can be added to it; and if any ſhould go about it (excepting ſuch additions as well may be added, by reaſon of ſome emergencies ſince the time he wrote, and ſome other additions and explications, not derogatory from him) they would be forced very much to plough with his Heyfer, which would but look too much like a Plagiary. I could wiſh the book were reprinted, and haply it will be ſo, which may ſerve for Topicks to this ſubject. For as all the Poets after *Homer* are ſaid to drink of his Fountain, according to that picture or ſtatue of his, that denotes as much, with that Inſcription,

Ridet anhelantem poſt ſe veſtigia turbam.

Even ſo muſt, I conceive, all do from Doctor *Coſin*, that ſhall write upon this ſubject. I was upon Epitomizing that Apology of his, and had made ſome progreſs therein; but upon ſecond thoughts deſiſted, thinking it better to refer the Reader to him, rather then to adventure to abbreviate him, and thereby perhaps wrong him: an offence that too many Epitomizers are guilty of; therefore, I ſay, I ſhall onely make

uſe of ſome Notes, as confeſſed arrows out of his quiver, and ſippe of ſome others elſewhere, and point the Reader to his full ſtream, where any that liſt may drink their fill.

Upon theſe words in the late Act; *Provided, that this Act, nor any thing therein contained, ſhall extend, or be conſtrued to extend, or give unto any Archbiſhop, Biſhop, &c. any power or authority to exerciſe or execute, &c. any juriſdiction which they might not have done before the year of our Lord 1639. or to abridge or diminiſh the Kings Majeſties Supremacy in Eccleſiaſtical matters or affairs, nor to confirm the Canons made in the year 1640.*

I ſay, upon theſe words ſome are ready (miſtaking queſtionleſs the words and meaning of that Act) to renew that old exploded Opinion, or rather groundleſs Fancy, *That a ſeveral Royal aſſent to the executing of every particular Canon is required.* Hereto Doctor *Coſin* anſwers, That admitting this were true, then all the other opinions of thoſe that oppugn the ordinary Juriſdiction Eccleſiaſtical ſtand in no ſtead, and might be ſpared, becauſe this would cut off all at once. For none that exerciſe ordinary Juriſdiction Eccleſiaſtical, have it in particularity, (which by the oppugners ſeems to be meant) otherwiſe then by permiſſion of Law, to every of their proceedings, and impoſſible were it, by reaſon of the infinity of it, and troubleſomneſs to procure ſuch particular aſſent to the execution of every Canon. His Majeſties Delegates, when Appeals are made to His Majeſty in Chancery, would ſignifie nothing, could not exerciſe the power to them delegated, by reaſon of the want of ſuch particular aſſent; and it is a groſs abſurdity to grant, (as even the Oppugners and Innovators do) *That Teſtamentary and Matrimonial cauſes are of Eccleſiaſtical cogniZance,* (to ſay nothing of the reſt of Eccleſiaſtical cauſes) and yet cannot by reaſon of this want be diſpatched, nor can be dealt in by any other authority, according to any Law in force. This would ſpeak a defect in the publick Government, that the Subject ſhould have a right, but no likely or ready mean to come by it; and great offences by Law puniſhable, and yet no man ſufficiently authorized to execute theſe Laws. Since the abrogation of Papal pretended Supremacy, when the ancient rights of the Kings of *England,*

land, of being *Supreme Governors over all perſons within their Dominions, as well in all Spiritual or Eccleſiaſtical things or cauſes, as Temporal; and that no forreign Prince, Perſon, Prelate, State or Potentate, hath or ought to have, any juriſdiction, power, ſuperiority, preeminence or authority Eccleſiaſtical or Spiritual within this Realm, and ſo forth*, as in the *Act* and the *Oath*.

Since theſe rights were, as it were, *ex poſtliminio* reſtored, and declared to have been, as they ever ought to have been, in the Kings of *England*, many Laws have been made in ſeveral Parliaments for the ſtrengthning of Eccleſiaſtical Juriſdiction, and the more effectual execution thereof, and ſome of the Eccleſiaſtical Laws were enlarged, altered and explained:

* The Statutes for Delegates upon Appeals. * 25 H.8.19.

† Not long after, two Statutes for aſſiſtance of ordinary Eccleſiaſtical Juriſdiction, and for the ſpeedier recovery of Tithes in Courts Eccleſiaſtical. † 27 H 8 130. 31 H.8.7.

* The like for the recovery of Penſions, Procurations, &c. * 34 & 35 H.8 19.

† In the time of *Edw. 6.* in a Statute (ſince repealed by Queen *Mary*) a great number of particular cauſes of Juriſdiction Eccleſiaſtical, are there (by the way) rehearſed, that Ordinaries and other Eccleſiaſtical Judges might and did then put in execution. 1 Ed.6.c.2.

So 1 *Mar.c.*3. 1 *Eliz.c.*1. 5 *Eliz.c.*23. *&* 9. That *Perjury or Subornation in a Court Eccleſiaſtical ſhall and may be puniſhed by ſuch uſual and ordinary Laws, as heretofore have been, and yet are uſed and frequented in the ſaid Eccleſiaſtical Courts.* Which proveth the uſual practice of Juriſdiction Eccleſiaſtical hitherto uſed (without any ſpecial aſſent) to be lawful.

So 13 *Eliz. c.*4. *&* *c.*10. and many more in the ſame Queens time, and King *James*, and King *Charles* the Firſt, that bleſſed King and Martyr. I ſay, many are the Laws that have been made for the ſtrengthning of Eccleſiaſtical Juriſdiction, and the more effectual execution of it; and ſome of theſe Laws were enlarged, altered and explained. But never was there any Law, Cuſtom or Act of Parliament, that required *a ſeveral Royal aſſent to the executing of every particular Canon.* Many are the reaſons which Dr. *Coſens* gives in the firſt Chapter of his Apology againſt that *particular Aſſent*; wherein

wherein he ſhews his great candor, and ingenuity, and deſire to give abundant ſatisfaction to all Opponents, though never ſo unreaſonable, that were it not as clear as the Noon-tide light, that no ſuch particular aſſent is needful, ſome might think that he fear'd his cauſe, and be ready to ſay, that *Defenſio nimis operoſa, reatum quaſi arguit.*

But touching the validity of the Eccleſiaſtical Laws, there needs, I conceive, no more be ſaid then what is expreſſed in that Act of Parliament 25 *H.*8.19. the Eccleſiaſtical Laws, that were in uſe and practice before that Statute, are thereby eſtabliſhed thus:

Provided that ſuch Canons, Conſtitutions, Ordinances and Synods Provincial, being already made, which be not contrariant nor repugnant to the Laws, Statutes and Cuſtoms of this Realm, nor to the damage or hurt of the Kings Prerogative Royal, ſhall now ſtill be uſed and executed, as they were before the making of this Act, untill ſuch time as they be viewed, &c. by the 32. *perſons mentioned in that Act:* which is not yet done.

The Eccleſiaſtical Laws, which have been made ſince that Act, and all that ever hereafter ſhall be made, ſo long as that Statute ſtands in force, (the requiſites in that Act being obſerv'd) are thereby, I conceive, confirmed, or to be confirmed. The Submiſſion and Petition of the Clergy mentioned in that Act is, *That they would not enact or put in ure any new Canons, &c. in their Convocation, without the Kings Royal aſſent and authority in that behalf.*

There it is ſaid, That *the Convocation in the time coming ſhall alwayes be aſſembled by authority of the Kings Writ, and that the Clergy muſt have the Kings moſt Royal aſſent and licence, to make, promulge, and execute ſuch Canons, Conſtitutions and Ordinances, Provincial and Synodal:* elſe they may not enact, promulge or conſtitute any ſuch Canons, &c. And this courſe hath ever ſince been obſerved. Every Convocation called by His Majeſties Writ and the Clergy, had eſpecial licenſe from His Majeſty to enact ſuch Canons, &c. and to execute them.

The Proviſion following being obſerved, which is this, *Provided that no Canons, Conſtitutions or Ordinances, ſhall be made or put in execution in this Realm by authority of the Convocation*

tion of the Clergy, which ſhall be contrariant or repugnant to the Prerogative Royal, or the Cuſtoms, Laws or Statutes of this Realm, any thing contained in that Act to the contrary thereof notwithſtanding.

If any be put in execution contrary to this *Proviſo*, and contrary to any after-Acts of Parliament, whereby His Majeſty hath further power acknowledged in cauſes Eccleſiaſtical, then 'tis illegal: but that is much ſooner alledged than proved. The particular Eccleſiaſtical Laws in force, have by Dr. *Coſens* and others been ſufficiently demonſtrated, I humbly conceive. In caſe any Juriſdiction Eccleſiaſtical or Civil within this Realm, be not derived or claimed from the Crown, as to the execution of it at leaſt; then the former objection were of force; but another Act of Parliament, 8 *Eliz. c.*1. ſhews the contrary ſufficiently: where all Eccleſiaſtical Juriſdiction is acknowledged United to the Crown, as there fully: and that very clauſe 1 *Eliz.*1. together with His Majeſties Letters Patents directed forth for confirming Archbiſhops and Biſhops, is brought in the preamble thereof as a ſtrong proof, without ſcruple or ambiguity, that *the authority and juriſdiction by the Clergy executed, is thereby given them from Her Majeſty.* This alſo, were there nothing elſe, were ſufficient to entitle them the Kings Majeſties Eccleſiaſtical Laws, as well as other Laws, are called the Kings Majeſties Laws. But they are up and down in the Acts of Parliament called the Kings and the Queens Eccleſiaſtical Laws, 1 *Eliz. c.*2. 5 *Eliz. c.*25. 25 *H.*8.27. *&c.* and even by the Note-gatherer, that great oppugner, againſt whom the Doctor writeth, they are called *the Eccleſiaſtical Laws of England.* And in this late Act above mentioned they are called *the Kings Majeſties Eccleſiaſtical Laws.*

Yet for executing of theſe Laws by the Eccleſiaſtical Judges, what out-cries were made againſt them? eſpecially in the beginning of the late Long Panliament, by His late Majeſty, of bleſſed memory, called the *Black Parliament, Summa imis miſcendo*; and what favours were then afforded to thoſe *Bonefen's*, as we have ſince had ſad experience of them, God grant we may be cafeful of them for the future, I am unwilling

willing to recite. Eccleſiaſtical Judges are not onely tyed by their offices and * Oaths, but (at leaſt in ſome particulars, for which they have, though moſt unjuſtly, been much clamour'd againſt) are moſt ſeverely by Act of Parliament charged to ſee the execution of, if not of others too, yet of one eſpecial Eccleſiaſtical Law; for their care wherein ſome of them have been well-nigh ruined: that is, that according to that Act of Parliament, 1 *Eliz.* c. 2. *For uniformity of Prayer and Adminiſtration of Sacraments, every perſon ſhould diligently and faithfully reſort to their Pariſh Church or Chappel, where Common prayer and ſuch Services of God ſhall be uſed, upon every Sunday and other dayes ordeined and uſed to be kept as Holy-dayes, and then and there to abide orderly and ſoberly, during the time of Common prayer, Preaching, or other Service of God to be uſed and miniſtred, &c.* Then follows thus, *And for due execution hereof, the Queens moſt excellent Majeſty, the Lords Temporal, and all the Commons in this preſent Parliament aſſembled, doth in Gods name earneſtly require and charge, all the Archbiſhops, Biſhops, and other Ordinaries, that they ſhall endeavour themſelves to the utmoſt of their knowledge, that the due and true execution hereof may be had, throughout their Dioceſes and charges, as they will anſwer before God for ſuch evils and plagues, wherewith Almighty God may juſtly puniſh his people for neglecting this good and wholſome Law.* Who would think, (had we not ſadly felt their deſigns) that the great Magnifiers of Parliaments (for which I diſcommend them not, ſo they keep within due compaſs) would have been ſo bitter againſt thoſe, that acted but according to theſe ſtrict Parliamentary charges?

* Canon. 117. Canon. & Conſtitut. 1604.

CHAP.

CHAP. III.

The Heads of the ſeveral Chapters in that Apologie of Doctor Coſens. *Part* 1.

*C.*1. THe particular diſtribution of cauſes proved to be of Eccleſiaſtical cognizance, beſides Teſtamentary and Matrimonial. With a diſcourſe of

*C.*2. Biſhops Certificates againſt perſons excommunicated, being a ſpecial point of their voluntary Juriſdiction, where there is no party that proſecuteth.

*C.*3. That matters in the former Chapter adjoyned to Teſtamentary and Matrimonial cauſes (though properly they be not of Teſtament or Matrimony) are of Eccleſiaſtical cognizance, and how far.

*C.*4. General proofs out of Statutes, that ſundry other cauſes beſides Teſtamentary and Matrimonial, are of Eccleſiaſtical cognizance.

*C.*5. That Suits for Tithes of Benefices upon voidance or ſpoliation, likewiſe that Suits for Tithes, Oblations, Mortuaries, and Penſions, Procurations, &c. are of Eccleſiaſtical Juriſdiction, is proved by Statutes eſpecially.

*C.*6. That Suits for right of Tithes belong to the Eccleſiaſtical Juriſdiction, and how far, is ſhewed out of the books and Reports of the Common Law; ſo of places of Burial and Church-yards, and of Penſions, Mortuaries, Oblations, &c.

*C.*7. Of right to have a Curate, and of Contributions to Reparations, and to other things required in Churches.

*C.*8. Proofs in general, that ſundry crimes and offences are puniſhable by Eccleſiaſtical Juriſdiction, and namely Idolatry, Hereſie, Perjury, or *Læſio fidei*; and how far the laſt of theſe is there to be corrected: alſo of diſturbance of Divine Service, or not frequenting of it, and neglect of the Sacraments.

*C.*9. That Simony, Uſury, Defamation or Slander, beating of a Clerk, Sacrilege, Brawling or Fighting in Church

or Church-yard, Dilapidations or waſte of an Eccleſiaſtical Living, and all Incontinency; are puniſhable by Eccleſiaſtical authority, and how far.

*C.*10. Several other matters reckoned in this tenth Chapter, as ordeining of real Compoſitions, and diſannulling of them, ſuſpenſion *ab ingreſſu Eccleſiæ, &c.* Interdiction of a Church, Sequeſtration, Excommunication, Pariſh-Clerks fees, Goods due to a Church deteined, Blaſphemy, Idolatry, Apoſtaſie from Chriſtianity, violation and prophanation of the Sabbath, Subornation of Perjury, Atteſtation of a womans chaſtity, Drunkenneſs, filthy ſpeech, violation of a Sequeſtration or Induction, hindering and diſturbance to carry away Tithes, enjoyning of Penance corporal, contempt of obeyiug the Decrees of the Eccleſiaſtical Judge, Fees due in Eccleſiaſtical Courts, Curates and Clerks wages, Forgery in an Eccleſiaſtical mattet, as of Letters Teſtimonial, of Orders of Inſtitution, burying of excommunicate perſons, communicating with excommunicate perſons, frequenters of Conventicles, digging up of Corps buried, and generally for any matter Eccleſiaſtical indefinitely, by the *Articuli cleri*, may be cited: All theſe are of Eccleſiaſtical Juriſdiction; and proofs that any Subjeet, Lay or other, may be cited in any cauſe Eccleſiaſtical.

*C.*11. That Lay-men may be cited and urged to take Oaths in other cauſes then Teſtamentary and Matrimonial.

*C.*12. The grounds of the opinions to the contrary examined and confuted.

*C.*13. That judgment of Hereſie ſtill remaineth (at the Common Law) in Judges Eccleſiaſtical, and that the *Proviſo* touching Hereſie in the Statute 1 *Eliz.* 1. is onely ſpoken of Eccleſiaſtical Commiſſioners thereby authorized.

*C.*14. That by the Statute Her Majeſty may commit authority, and they may take and uſe for Eccleſiaſtical cauſes Attachments, Impriſonments and Fines. Herein he writes alſo how the Law was at that time.

*C.*15. That an Eccleſiaſtical perſon may be deprived of his Benefice without indictment or proſecution of party.

*C.*16. That after forty dayes an excommunicate perſon may

may be otherwiſe puniſhed then upon the Writ *De Excommunicato capiendo*, and that the ſaid Writ may and ought to be awarded upon contempts ariſing on other cauſes Eccleſiaſtical, then any of thoſe ten crimes mentioned in the Statute 5 *Eliz.* 23.

C. 17. Of a Prohibition, what it is, where it lyeth not, and where it doth, and how it ceaſeth by a Conſultation, and of the Writ of *Indicavit.*

C. 18. An Analyſis or unfolding of the two ſpecial Statutes touching *Præmunire*, with ſundry queſtions and doubts about that matter, requiring more grave reſolution.

Then in the ſecond part of his Apology the Doctor ſets forth his Proofs, together with his Anſwers, to the objections made againſt the manner of practice of Juriſdiction Eccleſiaſtical by thoſe that oppugn it.

C. 1. Of the diſtinction of Offences, and ſeveral kinds and ends in puniſhing them, with the neceſſity of puniſhments.

C. 2. Of two ſorts of proſecution of crimes and offences, *viz.* by a party, and of office; the practice of them in Scripture, and in the ſeveral Courts of this Realm.

C. 3. Of the ſundry kinds of objecting crimes by a party mentioned in the Civil Law, as by reaſon of a mans publick charge and function; alſo by way of Exception, Supplication, Complaint, Delation and Accuſation. The true ſignification of the word *Accuſatio*, its divers acceptions, definition and expoſition thereof, with ſome reaſon of the frequency of Accuſation in Courts of the Civil Laws in former times, is alſo declared.

C. 4. That the proſecution of crimes by way of Accuſation, is in moſt places forbidden, or grown into diſuſe. The reaſons hereof be, partly the danger to the Accuſers, and partly the hatefulneſs of that courſe. Therein alſo is diſputed, whether all Accuſation be unlawful, and certain points delivered to be obſerved by all them that will accuſe others.

C. 5. Of the ſeveral acceptions of the word *Officium*, the ſignification of the words *Inquiſitio*, *Queſtio*, *crimina ordinaria & extraordinaria*, the reaſon why enquiry by office came in place of Accuſation. Of Enquiry in general and ſpecial, of-

Enquiry ſpecial, *Ex officio nobili ſive mero, mixto & promoto,* and of the privileges of proceeding *ex mero officio* above the other.

C.6. Of Denunciation, a ſpecial means of ſtirring up the office, of the manifold uſe thereof on the other ſide the Sea. The general acception of that word, and of four kinds of Denunciation, how they differ one from another, what is required in them, and when a Denouncer is to be condemned or excuſed of expences, and what courſe of dealing againſt crimes and offences, is holden both in Courts of the Eccleſiaſtical Commiſſion, and in ordinary Courts Eccleſiaſtical of this Realm.

C.7. That the Civil and Canon Laws allow ſundry means to ground a ſpecial Enquiry of office againſt a crime, beſides Accuſation and Preſentment: therein is alſo conteined an Anſwer to a ſuppoſed Rule, and declared how from general they deſcend to ſpecial Enquiry. And that beſides thoſe two, either a fame, or *clamoſa inſinuatio*, or private judicial Denunciation, or Canonical Denunciation, or *Iudicat*, or taking with the manner, or other notoriety of the fact, or impeachment by ſome of the Complices, or collution of the accuſer, or the not objecting in due time, or when the Enquiry tendeth but to a ſpiritual puniſhment, may ſeverally any of them ſerve to warrant ſuch enquiry, with ſome obſervations touching the nature of moſt of theſe.

C.8. That to proceed ſometimes againſt an offence, otherwiſe then upon Accuſation or Preſentment, or then upon an Appeal or Indictment, (which two at the Common Law have reſpective correſpondence unto the two former) is no diverſe, much leſs any contrary or repugnant courſe to the Laws, Statutes and Cuſtoms of this Realm. This is proved by Common Law, Statutes, and practice in proceedings informative and punitive, with anſwer to certain objections made to the contrary.

C.9. How the ſecond opinion (here to be treated of) is, that no Lay-perſon may be cited of office in any cauſe but Teſtamentary or Matrimonial; and that the drift of that opinion is againſt proceeding of office in matters criminal.

The

The neceſſary uſe and equity of proceeding (ſomtimes) criminally by the Judges office in Courts both Temporal and Eccleſiaſtical.

*C.*10. Conteineth an Anſwer to ſome further objections, made againſt the conveniency and reaſonableneſs of proceeding againſt crimes, of office.

*C.*11. That the Laws of the Realm do uſe Enquiries and Proceedings *ex officio*, that they allow it in Courts Eccleſiaſtical, with anſwer to ſome objections that are made to the contrary.

*C.*12. Is ſet down a Reply to the Note-gatherers anſwers, given to certain reaſons, that have been made long ago, for to ſhew the like courſe to be alſo practiſed in Temporal Courts; and an anſwer to his reaſons brought to prove, that in proceeding of office there is ſome contrariety unto the Laws of *England.*

*C.*13. That the Enquiry *ex officio* againſt crimes, is allowed both in Civil and Temporal Courts, and in Eccleſiaſtical alſo, by the two Laws Canon and Civil.

*C.*14. Conteineth an anſwer to ſuch objections, as upon the Civil or Canon Laws are brought againſt all proceedings of office in cauſes criminal, by the Treatiſor and the Note-gatherer.

*C.*15. Enquiry and proceeding of office, without an accuſer, and grounded upon ſome other of the means, afore proved ſufficient to enter into ſuch enquiry, is approved by ſundry examples of Scripture.

*C.*16. An Anſwer is made to ſuch objections, as out of Scripture or Eccleſiaſtical Writers, be made againſt criminal proceeding of office, by the Note-gather and others.

In the third part he concludes upon the whole matter, for which his Apology was made.

*C.*1. Of the lawfulneſs of Oaths. What an Oath is, and the reaſon or original formal cauſe of the uſe of Oaths.

*C.*2. An Anſwer to certain doubts made concerning oaths, as namely, why in Scripture God is ſaid to have ſworn, how by Oath he is ſaid to be called to Witneſs. An Oath no tempting of God, but a part of his Worſhip. Why nevertheleſs

theleſs ſome are repelled from taking Oaths. Whether Adjuration be lawful. After whoſe meaning an Oath is to be underſtood. Whether every promiſſory Oath be ſimply to be kept. Whether an Oath may be diſpenſed with, and how far, and whether a Chriſtian may by mutual Oaths, contract with him that ſweareth by falſe gods.

C. 3. Diviſion of Oaths according to the outward form of taking them, according to the matter and inward form of them, with plain deſcription of every kind of Oath.

C. 4. That the Ceremonies uſed in taking and giving of corporal oaths, with laying hands upon the Bible or Teſtament, and ſwearing by the Contents of it, are not unlawful.

C. 5. The true iſſue of the next Opinion in queſtion. Two ſorts of crimes and offences prohibited. In what cauſes an Oath here ſpoken of may not be miniſtred, and the manifold convenience and neceſſity of an Oath, ſometimes to be miniſtred in a cauſe criminal and penal unto the party, with ſome few objections touching inconveniences thereof, anſweted,

C. 6. That Oaths of men touching matters damageable, criminal, and penal to themſelves, are urged and acted by Temporal Courts, and by the Laws of this Realm.

C. 7. Wherein are contained Anſwers to ſuch Objections and Reaſons, as be made for proof of a contrariety or repugnancy in theſe Oaths, unto the Statutes, Laws, or Cuſtoms of this Realm, and a Reply to the Treatiſours Anſwers made unto certain Objections, ſuppoſed likely to be made in juſtification of this kind of Oath, by the Temporal Laws.

C. 8. That miniſtring of ſuch Oaths, is by the Law of the Realm, allowed unto Judges of Eccleſiaſtical Courts, and ſome few Objections made to the contrary anſwered.

C. 9. That ſuch Oath touching a mans own crime is allowed both by the Canon and Civil Laws; how far, and in what ſort, and that the like is eſtabliſh'd and thought equal, by the Laws and Cuſtoms of ſundry other Nations, as well ancient as modern.

C. 10. An Anſwer to ſome Objections pretended to be made againſt this kind of Oath from the Laws Civil and Canon.

That

C. 11. That not only ſuch an Oath may be taken, but alſo being by Magiſtrates duly commanded, ought not to be refuſed, is approved by Scriptures, by practice of the Primitive Church, and of late times; together with a Reply unto certain Anſwers made untó ſome proofs here uſed.

C. 12. An anſwer unto ſuch Objections, as be pretended to be gathered from Divinity, Divines, and from the examples of godly men againſt miniſtring Oaths unto parties in matters of their own crimes.

C. 13. Four ſeveral opinions of the Innovators againſt the parties taking of an Oath in criminal cauſes, with Anſwers alſo unto their Reaſons and Objections.

C. 14. That a man being charged by authority to diſcover his knowledge touching ſome offence, which his Chriſtian brother is ſuppoſed to have done, is bound to reveal it, though it may breed trouble and puniſhment to his brother, and the Reaſons to the contrary are anſwered and refuted.

C. 15. Their Arguments are anſwered, that condemn the miniſtring and taking of an Oath, as unlawfull, becauſe they have not diſtinct knowledge given unto them of every particular before the taking of it, and the like courſe by Examples, is approved lawful and godly.

C. 16. That after the party hath anſwered upon his Oath, it is neither unuſual, unlawful, or ungodly to ſeek to convince him by Witneſs, or other trial, if he be ſuſpected not to have delivered a plain and full truth; and ſomewhat alſo in approbation of Canonical Purgation, with anſwers to the Treatiſors Objections againſt them.

CHAP.

CHAP. IV.

By the late Act, the manner of proceeding in Eccleſiaſtical Courts, is not altered, but left as it was. A Summary relation of what Doctor Coſens *in his Apology hath aſſerted and made good by Gods word, the practice of the Primitive Chriſtians, the opinion of the Fathers, the Laws Canon and Civil, and the Laws of the Land allowing and warranting them. The like practice at Common Law, and at* Geneva *and other places, pretending ſtrict Reformation.*

AS to the proceeding *Ex officio*, or otherwiſe in the Eccleſiaſtical Courts, according to Law and the due former practiſe, nothing in that late Act is ſaid againſt it; and therefore implicitly, at leaſt, it is allowed and approved. *Rati habitio mandato æquiparatur*, 'tis a Rule of Law. The Law in that caſe remains at it was before, nothing need be ſaid in juſtification thereof, but only as touching the Oath *Ex officio*, or other Oath, not to be adminiſtred as there, and touching Purgation.

Touching the *Proviſo's* in that late Act, that which forbids Eccleſiaſtical Judges, to exerciſe any power, &c. as there; and that other *Proviſo* that forbids *them to tender*, or adminiſter unto any perſon whatſoever, the Oath uſually called the Oath *Ex officio*, or any other Oath whereby ſuch perſon to whom the ſame is tendred or adminiſtred, may be charged or compelled to confeſs, or accuſe him or her ſelf of any criminal matter or thing, whereby he or ſhe may be lyable to any cenſure or puniſhment. I ſay, touching the former *Proviſo* he hath, I conceive, given full ſatisfaction in that his Apology, in anſwering to the objections made in his time thereabout. Therein alſo he clearly and fully juſtifies the proceedings of Eccleſiaſtical Courts in general and particular caſes. And to that other *Proviſo* touching the Oath *Ex officio*, or any other Oath; and touching Purgation, as in that Act,

I humbly conceive, *salvo meliore judicio*, he fully and clearly evinces it, that the law and practice thereof was just, to tender and administer the Oath *ex officio*, or at the instance of a party, for the finding out of Simony, Adultery, and other crimes and deeds of darkness, *difficillima probationis*, so that evil may be removed from the Land. Alwayes provided that there was just cause for the Ecclesiastical Judge so to tender and administer that Oath; that is, that there was, before such oath was so administred or tendered to any party, due proof made of a common fame, that the party was guilty of such crime, touching which such oath was to be administred; or at least there was, as in some cases, *denunciatio Evangelica*, or *canonica*, or *insinuatio clamosa*, or other sufficient *indicia præsumptionis* or *suspicionis*, to induce the Judge to tender that oath; and so the practice alwayes was, and if it ever was otherwise, (as I believe that will scarcely be proved) it ought not to have been. He sets down the due cautions that ought to be had, when it is very probable that the person to whom that oath is tendered, will forswear himself, then to forbear it; and that in capital crimes, to the danger of loss of life or limb, it is not the practice in any Courts to administer such oath, for that very fear of Perjury; it being too much to be feared, that too too many would rather forswear themselves then endanger either life or limb, (though in some places of Scripture it appears, that even in such cases such oaths have been administred.) The Father of lies could speak truth in such a case, *Skin for skin* (or rather as some learned in the *Hebrew* would have it) *Skin after skin, and all that a man hath will he give for his life.* There also he shews the weakness and inconcludency of that vulgar Saying, *Nemo tenetur seipsum prodere* or *accusare*, being indeed the trite and general objection. That a man is not properly said to betray or accuse himself, when as publick fame, or other sufficient *indicia*, presumptions or suspicions have accused him, these are instead of the accusers: and it seems dis-ingenuous at least, in those especially that pretend to Learning, and have or might have examined the Canons, and Ecclesiastical Laws in that point, to urge one piece of a sentence and leave out the rest; Job 2.

where they found or might have found that ſentence, *Nemo tenetur ſeipſum prodere* or *accuſare*, they did alſo or might have found that which follows in that ſentence, viz. *Sed proditus per famam, tenetur ſeipſum oſtendere, & innocentiam ſuam purgare.* The accuſer of his brethren cited Scripture to our Savi-
Mat. 4 6. our; ſayes he, *He ſhall give his Angels charge concerning thee, and in their hands they ſhall bear thee up, &c.* leaving out that in the
Pſal. 91. 11. Text that follows after theſe words, *He ſhall give his Angels charge concerning thee*, that is, *to keep thee in all thy wayes*; which alters the caſe. That note or comment upon the Law, (or if they will needs call it a Rule or Maxime it matters not) *Nemo tenetur ſeipſum prodere vel accuſare, ſive propriam turpitudinem revelare*, is to be underſtood in crimes ſimply ſecret, and which are no wayes diſcloſed or come to light. But when ſuch ſecret ſins are by ſome of thoſe wayes, that open a way to enquiry of a perſon ſuppoſed criminous, come abroad, and ſo in ſome ſort are manifeſted; then thoſe former rules ceaſe, and that of St. *Chryſoſtom* comes in, *Homil. 31. ad Hebraos, Non tibi dico, ut te prodas in publicum, neque apud alium accuſes*: but upon ſuch diſcloſing, then *Proditus tenetur ſeipſum oſtendere, & innocentiam ſuam purgare.* This is for the avoiding of ſcandal, and that the party may be reformed. Therefore doth *Aquinas* himſelf reaſon thus, *Thom. 2. 2. Cum quis*, ſaith he, *ſecundum ordinem juris à judice interrogatur, non ipſe ſe prodit, ſed ab alio proditur, dum ei neceſſitas reſpondendi imponitur, per eum cui obedire tenetur.*

As for tendering the Oath to the party where there is an accuſer, that is not done upon the crime till the fame be proved, or ſufficient preſumptions, circumſtances, *indicia*, or ſuſpitions, or *ſemiplena probatio*, the oath of one ſufficient witneſs at leaſt, to induce the judge to give that oath, though penal in ſome ſort to the party.

This practice he proves conſonant to Gods Word, to the practice of the primitive Chriſtian, and the opinion of the holy Doctors and Fathers of the Church; as alſo conſonant to the practice of *Geneva*, and other at leaſt ſeemingly ſtrictly reformed Churches: and to the practice of all Chriſtian Nations, and other Nations not Chriſtian, guided onely by right reaſon

reaſon and the Law of Nature: as alſo that by the known Laws of this Land, the Eccleſiaſtical Judges were ſo warranted and commanded to give that oath: the Eccleſiaſtical Laws and Canons being full and clear in that point. Then he ſhews how the proceeding at Common Law in this Land is the ſame, not onely in ſome criminal but civil cauſes alſo. For private debts 'twixt private perſons penal to them, as in Wagers of Law, ſometimes for a greater, ſometimes a leſſer debt, 'twixt two private parties, with the parties oath that is accuſed, and his Compurgators too; even as in Purgation Canonical in the Eccleſiaſtical Courts, together with other Purgation or Deciſory Oaths at Common Law. Proceedings in Chancery, with the ſeveral ſpecies and kinds of caſes, wherein ſuch Oaths at Common Law are tendered, being very numerous, and are by him *cap.6.* in the third part of his Apology, and other parts thereof reckoned up, and fully ſet forth. And if this may be done in civil cauſes, ought it not much rather be allowed the Church in criminal, which works onely, *medicinaliter,* to reformation? the Commonwealth works *ad pœnam,* the Church not ſo; this to the amendment of the party, to bring him to a voluntary ſubmiſſion, and to take away the offence and ſcandal which he hath juſtly given to his Neighbour, and to lead a new life; that (perhaps) to the loſs of liberty, corporal puniſhment, or livelyhood at leaſt, beſides the infamy of being convicted of doing diſhoneſtly and unworthily.

CHAP. V.

That it is consonant to Gods Word to give such an Oath Ex officio, *or otherwise.*

Rom.13. EVery soul *is to be subject to the Higher Powers.* This is to be understood in all commands not contrary to Gods
Acts 5.29. Word; in such comes in the Apostles rule, *It is better to obey God then man.* That the giving such an oath is not contrary to Gods word: An oath duly imposed by the Magistrate, necessitates the Subject to take it, as appears by the commandment of God himself, *Thou shalt fear the Lord thy God, and serve him, and shalt swear by his name.* The like is given
Jer.4.25. by the Lord in the Prophet *Jeremy, O Israel, thou shalt swear, The Lord liveth in truth, in judgment and righteousness. Joshua*
Josh 13.2,7. gave charge to all the Magistrates of *Israel*, that *They shall not make mention of the Gods of other Nations, nor shall cause to swear by them. Saul* did not onely charge the people with an oath,
1 Sam.14. but *made them vow with a curse not to eat any food that day till night:* therefore one of them reported to *Jonathan, Sauls* son, *That his father had made the people to swear.* Some would cavil at this, as but an Adjuration, and would without reason difference that from an Oath; but in that Chapter, 1 *Sam.*14. it is four several times called an Oath. The wise King *Salomon* imposed an oath upon *Shimei* in a cause capital to him,
2 Kings 41. *Did not I make thee* (saith he) *swear by the Lord, &c.* So King
1 Sam.24. *Saul urged David to swear unto him.* For a private offence only between Neighbours, King *Salomon* testifieth that a necessary oath of Purgation may be required by the Complai-
1 Kings 8. nant, *When a man shall trespass against his neighbour, and he lay*
2 Chron.34. *upon him an Oath to cause him to swear, &c.* King *Josias made a*
Neh.5.12. *covenant and vow, and caused all that were found in Jerusalem and Benjamin to stand to it.* Nehemiah *caused the Priests to swear, &c.* It is assigned for a special mark of a Godly man,
Num. 30.3. *To swear to his neighbour, and not to disappoint him, though it be to*
Psal.15.4. *his own hinderance.*

Abraham said thus to his servant, *I will make thee swear by*

the

the Lord God of the Heavens, &c. this in a private cauſe, much more a Magiſtrate in a cauſe wherein the Commonwealth or Church of God hath Intereſt, to have it ſincerely dealt in. Gen.14.3.

Jacob moved *Eſau* to the ſale of his birthright, and took an Oath for confirmation of it. Gen.25.33.

A man ſuppoſed to have born falſe witneſs againſt another, is thereof brought in queſtion, and re-examined; if it be objected, it was not upon oath, by conſequence of reaſon it muſt be upon oath, when what he has ſaid before upon oath is re-examined, and this in a caſe very penal to him. Deut.19.17.

The oath of Adjuration is very frequent in Scripture, *Prov.29.14.* about not declaring curſing which he heard. By the Hiſtory * of *Micah*, as we are † *bound to do all to the glory of God*; ſo it belongeth to the glory of God for a man, by due preſumptions (burdned with a crime, and charged by the Magiſtrate) to confeſs of himſelf; as appeareth by the hiſtory of *Achan*. The lot fell upon him, but this was but an inducement to ground a ſpecial Inquiſition againſt him; if hereupon he might have been executed, *Joſhua* needed not to have required any further confeſſion of him; but he goes further with a moſt ſolemn Adjuration, (in thoſe dayes uſed for an oath, the *Hebrew* word ſignifying both, and being tranſlated ſometimes *juramentum*, and ſometimes *adjuratio*. * Jud 17.1,2. † 1 Cor.10.3. Lev.5.1.

Son, give glory to the Lord God of Iſrael, &c. albeit the puniſhment was capital, *Ezra adjured the Chief Prieſts, &c.* Joſh 7.19. Ezra 10.5.

Calvin in his Inſtitutions gathereth, that *Achan* took an oath. When a man is found ſecretly murdered in the field, and the murder is not known, nor ſuſpected; yet all the Elders of the next City thereunto ſhould uſe certain Ceremonies, and then ſwear, *That their hands have not ſhed this bloud, nor their eyes have ſeen him that ſhed it* Deut.21.

In *Leviticus* a certain Sacrifice is to be made for certain ſins, amongſt which this is one, as *Arias Montanus* tranſlates it out of the *Hebrew*; *If a ſoul, or a man ſhall have ſinned, and have heard the voice of an Adjuration or Oath, &c.* That which is here ſaid, *if he have heard the voice of an Oath*: the *Geneva* Tranſlation offereth it thus in the Margin, as if it were nearer to the *Hebrew* then the other in that Text, viz. *If the judge hath taken an oath of any other.* Levit.5.1.

When a man delivers money or ſtuff on truſt *to be kept* Exod.22.

by

by his neighbour, if it happen to be imbezelled away, and *the thief be not certainly known or found*, by the Law of God he muſt take a neceſſary oath *of purgation and enquiry*. The ſame alſo is a little after eſtabliſhed by God touching any quick goods
Ibid. v. 10. happening to be left *in depoſito*. A ſacrifice of Atonement for ſuch a ſin of Perjury is preſcribed, *If any do ſin* (ſaith the Lord) *and deny unto his neighbour, &c.* If a man be moved
Num. 5.14. with a jealous mind againſt his wife, ſhe is not onely to be charged with an oath, but to have further tryal to drink the
Jer. 38 14. bitter waters. When the Prophet *Jeremy* was charged by the King in a generality, to anſwer that which he would aske him, the Prophet promiſeth ſo it ſhould not be capital to him, he would anſwer it. Whether upon oath or not oath, (for before God 'tis the ſame) no doubt he anſwered the
(a) Jer.37.13. truth. (*a*) The ſame Prophet, when he was charged with a particular high crime, refuſed not to anſwer, or bid them
(b) 2 Kings 5. prove it, but roundly anſwers it. (*b*) So *Eliſha* examineth
(c) Gen 43.3. *Gehazi* his ſervant. (*c*) *Joſeph* in *Ægypt* gave an oath to his
(d) Ez.k. 7. 13. brethren. (*d*) *Zedekiah* took an oath of Subjection, and is
(e) 1 Sam.11. 2. blamed and puniſhed for breaking of it. (*e*) The oath given to the *Gibeonites* was to be kept, and the violation of it puniſhed. For the manner of proceeding, or the cauſe of queſtioning, we ſee many inſtances: Firſt, *in flagranti crimine*, * if a
* John 8. 4. party be taken in the manner, as we ſay; or the fact is mani-
(f) Num.25 8 feſt: as (*f*) *Zimri's* was. (*g*) Or though the fact be manifeſt,
(g) Deut.21.1 the perſon committing it is unknown, or the queſtion is of
(h) John 7.18. the perſon, the fact being unknown; as in (*h*) *Achans* caſe.
(i) Gen.3.8. Or by *indicia*, ſuſpected ſigns; ſo (*i*) *Adam* hiding himſelf:
(k) Gen 4.6. So againſt (*k*) *Cain*, *Abel* not appearing: *Adam* impeacht *Eve*, and *Eve* the Serpent, and both were puniſhed upon it.
(l) Gen.18. 20. Or upon infamy and cry, (*l*) *The cry of the Sodomites being great, I will deſcend*, ſaith the Lord. And ſuch kind of Enqui-
(m) Deut.17.4 ries are made both in the Law, (*m*) *If a report ſhall come to thee, or thou ſhalt hear*; as alſo in the Goſpel, as againſt the inceſtu-
(n) 1 Cor.5.1. ous perſon, (*n*) *It is reported*. Or by ſuggeſtion or complaint,
(o) Job 1.11. as in (*o*) *Jobs* cauſe, where the Devil was Accuſer. *Joſeph* onely upon ſuſpicion gave his brothers the oath. Evangelical denunciation, as *Mat.*18.7. when Church or State are in

dan-

danger, as in the Valley of *Achor*, that is againſt the troublers of *Iſrael*, ſo ſignifies the word *Achor*. When *Peter* and *John* were examined in the great Council, *By what power, or in what name they had done that miracle*; *Peter* full of the Holy Ghoſt anſwered plainly and truly, though it might have been capital to him. What ſpirit are they of, who being required by lawful Authority to anſwer in matters not capital, yet will not anſwer at all? for upon a mans own confeſſion judicial, though not upon oath, he may be equally convicted. In the proceedings againſt St. *Stephen* there were no Accuſers in truth, but thoſe who by Subornation denounced him to the Prieſts, and who are twice-called witneſſes, becauſe they depoſed againſt him; yet he refuſed not to make anſwer, though capital to him. When the Captain asked St. *Paul*, whether he were not that *Ægyptian* that made a Sedition, &c. he anſwered directly and denied it. Likewiſe the ſame Saint *Paul*, in all other his conventings before Authority, mentioned in the *Acts* (even at the ſuit and accuſation of a party) refuſed not particularly and truly to anſwer to all that was objected. And all this is done to the ſifting out truth, and puniſhing crimes, either truly ſo, or at leaſt thought to be ſo; and criminous perſons are queſtioned, as well of the fact, as circumſtances or fame; (*a*) *Haſt thou eaten of the fruit of the forbidden tree?* So the Princes queſtioned *Baruch* about *Jeremiahs* book, (*b*) *Tell us, how didſt thou write theſe words?* So (*c*) *Eſras* examined the queſtioned perſons concerning their own fact. So the (*d*) High-Prieſt, having committed Saint *Paul*, examined him further, for oftentimes Accuſers (as the Heathen could obſerve) fall off; all cannot, ſome will not accuſe; what then? many crimes, being the deeds of darkneſſe, cannot be (*e*) revealed; (*f*) *Becauſe hand is in hand, and they will not bewray themſelves.* Becauſe the name of *Doeg* ſounds harſh, and to come forth to accuſe a man is accounted poor and odious, a matter of coſt, danger and (*g*) Infamy; muſt Villany therefore be hid, and ſcattered abroad, and get ſtrength, till they break out to the deſtruction of the Commonwealth? Or becauſe none can or will (for 'tis all one, whether one will not accuſe or cannot accuſe) therefore it is

Acts 4. 7.

Acts 6.

Acts 22.

Acts 4. 25, &c.

(*a*) Gen 3.9.

(*b*) Jer. 36.17.

(*c*) Ezra 10. 11.

(*d*) Acts 23.20

(*e*) Eph. 5.11.

(*f*) Prov. 16.5.

(*g*) Prov. 25.8.

not

not lawful to queſtion? and without an Oath 'tis to little purpoſe; therefore God commands that way of Adjuration or giving an Oath. * So the King adjured *Micheas*, † ſo the High Prieſt our Saviour, and both of them anſwered. But ſhould any queſtion Adjuration, even a clear oath was lawfully given even to the actor; as *Exod.* 22. 8. 1 *Kings* 8 3. and therefore more then permitted to the Magiſtrate. For ſurely it were hard, if every private man might require an oath of the queſtioned, and not the Magiſtrate: ſhould it be lawful in the caſe of a Pawn, and not of a Kingdom? An oath is an end of controverſie, ſaith St. *Paul*; then an oath to be taken for that end. In a caſe Matrimonial, which is meerly Eccleſiaſtical, Interrogatories were adminiſtred with oath, (as in a cauſe of Incontinency, *Num.* 5.) and the proceedings being by Enquiry, without any accuſer at all. And this which is to be noted in the caſe in *Eſdras*, they are no wayes forced to it, but deſire to take their oath firſt, and to be examined after; then which there is no cauſe more ſuitable, then to the proceedings in Eccleſiaſtical Courts before the paſſing of the late Act, and againſt which the Innovators heretofore uſed to take exceptions. In ſome of theſe abovementioned inſtances, we ſee how oaths were adminiſtred even in capital cauſes, much more may they be where there is not that danger, nay, no danger of loſſe of Goods, Liberty, or any other loſſe; but onely for a medicine to the ſoul, for reformation of manners, and taking away ſcandal and offence given. They were queſtioned too, we ſee, upon ſmall ſuſpicions, ſigns, preſumptions, or any other cauſes of queſtion, nay, nothing at all as to the perſon queſtioned, upon whom no true colour of ſuſpicion lay, (ſomething like our Coroners proceedings in ſome caſes) but onely a fact was committed, that was apparent, whereof it was poſſible that he was not guilty, as in the caſe of a perſon found ſlain; then much more ought it to be upon great ſuſpicions, preſumptions, or publick fame thereof proved. This being thus by Gods Word, in the next place we may look into the practice and opinion of the primitive Chriſtians hereupon.

* 1 Kings 22.
† Mat. 26. 63.
Heb. 6. 16.
Esdras 1. 8, 9.

CHAP.

CHAP. VI.

That the Opinion and Practice of the Primitive Chriſtians, and the Fathers of the Church, was to adminiſter ſuch Oath Ex officio, *and upon Accuſation, and for Purgation Canonical, with the practice at* Geneva.

IT is well ſaid by an ancient and learned * Writer, *Dominus inter juramentum & loquelam noſtram, nullam vult eſſe differentiam.* And *Aquinas* ſaith, † *If he which is brought into queſtion, and interrogated by the Judge without his oath, ſhall anſwer untruly, that therein he ſinneth deadly.* The old Chriſtians in the primitive Church were far from ſuch ſhifts of anſwering dangerous queſtions propounded to them by Heathen Magiſtrates, or from anſwering untruths to them. *Tertullian* is herein very plentiful, eſpecially in his book called *Apologeticon: A Chriſtian,* ſaith he, *if he be indicted or denounced to the Magiſtrate, he rejoyceth in it; if he be accuſed, he propoundeth no defence; when he is interrogated, he moſt willingly confeſſeth; and when he is condemned, he giveth them or God thanks.* And much more hath *Tertullian* to this purpoſe. St. *Auguſtine* doth plainly eſtabliſh and allow of Oaths taken concerning a mans open offences, being indeed ſuch alſo in their own nature, *If perhaps* (ſaith he) *thine Oath be urged,* (meaning a Deciſory oath, be exacted of thee by a private perſon) *ſay not, I will not ſwear, for it cometh of evil which thou doeſt, but yet of his evil that exacteth it of thee; inſomuch as thou haſt no other means but thine oath to purge and clear thy ſelf of the matter in handling.* In another place he ſpeaks and allows of oaths taken in way of purgation of one ſuſpected for theft: and in another place he ſayes and approves of the ſame practice at *Millain*; this was in a civil cauſe criminally moved, and for theft; a crime, though not ſimply capital by the Civil Laws. In another place; *In denouncing others* (ſaith he, ſpeaking of Denunciation of faults to the Magiſtrate) *this moderation is alwayes to be uſed by us, that we relate it unto ſuch which may rather help than hurt him, (in caſe the party ſhall ſwear falſly) either by correcting him, or by*

* *Cromatius in 5 Mat. Facit. canon. 36. concil. Tolet. quart.*
† *Thom. 2. 2. qu. 69. art. 3.*
Tertul. in Apol. c. 1.
Aug. ſerm. 28. de verbo Apoſt. cap. 6.
Aug. ibid. c. 10.
Aug. ep. 137.
Aug. in qu. Lev.

deprecation to God for him, ſo that he will by confeſſing his fault apply this remedy unto himſelf. St. *Chryſoſtom* alloweth of Deciſory Oaths or Wagers of Law, and teſtifieth that ſuch neceſſary oaths were in thoſe times impoſed to exact mens confeſſions, and whether they had ſtol'en ſome certain thing or not. This he allowes touching meer crimes in their own nature, and that upon the inſtance of a Plaintiff particularly intereſted but in his goods and chattels.

Chryſ. hom. 16. ad pop. Antioc.

This kind of oath was not onely allowed in the old Church, but commanded to be put in uſe (as lawful and conſonant unto Gods Word) againſt perſons convented and had in ſuſpicion, even in one Church, which the moſt and hotteſt oppugners of this oath do reckon to be beſt, yea, and almoſt the onely Reformation that may rightly be ſo called: For in the Diſcipline of *France*, concluded of in the National Synod there, 1559, 1561, 1563, 1565. it was thus declared; *The faithful may be conſtrained by the Conſiſtory to tell the truth, ſo far forth as it derogateth nothing from the authority of the Magiſtrate.*

The Eccleſiaſtical Senate or Conſiſtory, act. 12.

They may be conſtreined, ſay they, but there is no compulſion, but either Civil, which they will not arrogate to themſelves, as torture or racking, impriſoning or fining, &c. or elſe by the parties oath, which upon pain of Perjury, if he once ſwear, or of conviction if he will not, doth as it were conſtrein a man to ſay truth. And that an Oath is meant by the Canon of the *French* Church, we are taught both by the Hiſtory of *Camperell* a *French* Miniſter at *Geneva*, as alſo by that of thoſe who danced in Widow *Balthazars* houſe there. *Camperell* was appointed by the Conſiſtory of Elders there, to be examined upon his Oath upon certain Interrogatories, whereof alſo two concerned what he had in his very purpoſe and intention of mind. The Dancers, becauſe at firſt they denyed it, were put to their corporal oaths, to declare the whole truth of that merriment. And all dancing there is held as an offence and grievous crime, as appears by the Ordinances of *Geneva*, and by the very laſt frame of Diſcipline concluded 1571. by the *French* Churches.

Later epiſt. Calvin. in folio pag. 421, 422.

Calvin. Farello pag. 64. epiſt. in folio.

For Purgation Canonical, as it was uſed in the Eccleſiaſtical Courts of this Kingdom, in a word 'tis the ſame in theſe

Courts

Courts in a criminal cauſe, as at Common Law a Wager of Law is in a civil cauſe; differs no more then thus, this is touching our Lands or Goods, that touching our Good name and Credit. It is ſo far from being condemned by good and godly Biſhops in ancient times, that by whole Councils it hath been preſcribed: *Let a Lay-man*, ſaith one Council, *if need be, purge himſelf by his Oath, and let a Prieſt by the conſecration of the holy Sacrament, be interrogated.* And another Council thus, *Let a Prieſt, if he can, purge himſelf of the crime with ſeven of his Order, and a Deacon with three.* So was it decreed by a third Council, *If a Prieſt or Miniſter be infamed amongſt his charge, and it cannot be proved before the Biſhop by witneſs, let him be ſuſpended untill he perform due ſatisfaction, leſt the faithful people be ſcandalized: But, as our Elders have taught, then is the ſatisfaction due and orderly, when according to the Canons, or as the Biſhops ſhall judge fit, he joyneth unto him ſeven Compurgators, and ſwears by the holy Goſpel laid afore him, that he hath not committed the crime laid unto him: When he is thus purged, then let him again freely execute his office.* And in another Council we find *Purgation* preſcribed for *Theft*, and alſo for *Adultery*; and according to the preſcriptions of theſe Canons and many others that might be alledged, examples of ſundry ancient Biſhops in the Church, that have themſelves made their own *Purgation*, for avoiding and removing ſcandal and offence. *Sixtus* the third, an ancient Biſhop of *Rome*, but upon the accuſation of one *Baſſus*, did willingly make his Purgation upon his oath in a Council. And ſo did *Leo*, another ancient Biſhop of the ſame See, purge himſelf with twelve Biſhops. *Gregory* the Great enjoyned unto * *Leo*, † *Memius* and * *Maximus*, three Biſhops, to clear and purge themſelves of ſeveral crimes by their oaths, whereof the laſt was for Simony. *Innocentius* alſo cauſed the Biſhop of *Trent* to purge himſelf likewiſe of the like crime of Simony. And what be the Oaths touching Goods ſtollen or imbezelled, which were left with a man upon truſt appointed in *Exodus*, and thoſe in *Salomons* Prayer at the *Dedication of the Temple*; other than oaths of Purgation of a crime, impoſed by the party having an intereſt? Likewiſe the oaths mentioned in *Leviticus* concerning

Concil. Tribur. canon. 21.

Ivo. lib. 5. *ex concil. Agath.*

Ivo. ibid. ex concil. Herden.

Concil. Worm.

12 *qu.* 4. *c. Mandaſtis.*

Ivo. Carn. l. 5.

* *Greg. ep.* 23. *ad Iuſtin. Presb.*
† *Id. ep.* 8. *l.* 2.
* *Id. ep.* 8. *l.* 7. *& ep.* 79.

Exod. 22. 7, 8.

2 *Kings* 8. 31.

Lev. 6. 2.

cerning goods denyed, that are pretended to have been left *in depoſito*; or goods gotten by *robbery or violent oppreſſion*, or caſually found after they were loſt, yet by the finder denyed; are they not for purgation and clearing of the party from the crimes imputed? and in ſome reſpect alſo deciſory of the whole controverſie, unleſſe ſound proofs touching the true guiltineſſe of the party may afterwards be found
Num. 5 14. out and uſed? The Oath of Jealouſie taken with a further ſolemnity of Purgation, and impoſed by the Prieſt, a publick Magiſtrate in that behalf, is an oath not onely of Enquiry, but of Purgation, to the woman denounced for ſuſpicion of
Deut. 21. 8. Adultery by her husband. Laſtly, the oath impoſed by Gods Law, upon the Elders of the City ſcituated next unto the corps of a man which is found ſecretly murdered; is a plain and moſt direct oath of *Purgation*, even in a *crime* (in his own nature) *evil and capital* to the offendors. For juſtifying of the Oath *Ex officio*, and at the inſtance of a party, and of Purgation with Compurgators, all in a manner as above, the authority of the Civil and Canon Laws is manifoldly extant; but that even the oppugners doubt not of, nor deny, but reject them, as in their conceit unreaſonable and ungodly; and therefore 'tis needleſſe to name them, being ſo eaſie to be ſeen, and obvious to every common eye. The received uſe of them, amongſt moſt Civil Nations, make it to be little leſſe than *Jus gentium*, and therefore by moderate and grave men not to be ſleighted.

CHAP. VII.

That the like practice touching these Oaths, is and was in all Forreign Christian Nations, and other Nations not Christian, guided onely by the Light of Nature.

TO prove this in Christian Commonwealths, the Canons of the Church, and the practice thereof in all such forreign Christian Nations evince it; then which nothing is more manifest: To cite the particulars, at leastwise to recite them, would be voluminous; scattered all along the Civil and Canon Law. Dr. *Cosens*, in his third part of that Apology, chap. 9. quotes many of them, as they were used in the *Roman* Empire, before *Constantines* time as well as after. By the customs of *Hungary* there be many and long Constitutions made for the taking such Oath, and of the manner of it. It is testified also to be the usual practice of all the Dominions in *Italy*, that the party convented in Temporal Courts, whether by way of Accusation, or at the Prosecution of another, or by way of Enquiry, *Ex officio judicis*, must swear to declare the truth, in all those things that shall be asked of him, even of the crime it self. This is much stricter than in the Laws of *England*, Ecclesiastical or Civil.

Consuetud. Hungar. de juram purgat.

Marian. in c. qualiter qu. 84. Casonus in Pract. fol. 8. num. 3.

For Merchandizes to be carried out of *France*, the Merchant must under his hand particularize the commodities with the weight and measure thereof, that there be no deceitful or forbidden Merchandize there, and upon the truth thereof he is to swear.

Ordonances du France, liv. 2. tom. 2. tit. 14. du droit de refus have passage, &c. pag. 895.

In another Ordinance there, the Plaintiffs swear to the truth of what is in their Bills, and the Defendants answer upon oath, to confesse those things which be within their knowledge. In other matters criminal it is reported to be the custom of *France*, for the party Defendant onely to *make faith* when they are objected, and he is thereupon to answer, whether he hath committed them or not; but he is not to take a corporal oath, betwixt which two (before God) there is no difference. But by the custom of *Normandy*, the Appealed of murther

Ordonance de France premier an. 1539. artic. 38.

Marcus decisor 674.

Grand Constumier entre les constumes du Normandy.

murther muſt upon his oath (holding his Adverſary by the hand) ſolemnly ſwear whether he hath committed ſuch fact or no: and *Stamford* affirmeth the Law of *England* to be the ſame in like caſe of Appeal.

Amongſt Nations of far elder times (in moſt flouriſhing Commonweals) oaths were taken by Plaintiffs and Defendants, in all cauſes whether civilly or criminally moved. So among the *Athenians*, beſides a ſumme depoſited to be forfeited by the failer. When *Æſchines* accuſed *Timarchus* of a foul crime perpetrated upon him by one *Miſgolas*, *Miſgolas* was to be put to his oath. *Plato* commends *Rhadamanthus*, that ſtrict *Juſticier*, feigned by the Poets (as *Æacus* and *Minos* alſo were) to be a Judge in another world over Ghoſts deceaſed, for his juſtice; I ſay, he commends him for *exacting an oath in every cauſe in controverſie*. *Ariſtotle*, *Plato's* Scholer, teſtifieth and commendeth the like courſe. The hiſtory of *Glaucus*, an ancient *Spartan*, that moſt juſt people of *Greece*, evidences this; there the oath of a thing left in Pawn was uſually given, *Glaucus* and his whole Family rooted out for denying ſuch a Pawn left with him.

King *Agamemnon* ſolemnly and publickly took his oath, that he had never polluted *Hippodamia* by Incontinency: ſo was the cuſtom in *Greece* in matters criminal. *Homer* mentioneth the ſame King purged himſelf alſo in another form, but with an oath too, that he had not violated *Briſeis*.

In the *Olympick* Games, the Gameſters with their Parents and Brethren ſwore they had uſed no fraud nor deceit.

In the old *Roman* Commonwealth, private Houſholders put an oath to their Labourers that gathered Olives, that they had not ſtollen nor imbezelled any, &c. So the old *Roman* Law is upon preſumptions, he that refuſeth to take the oath, though the cauſe be criminal, is taken for convicted. *Victoriauus*, General of *Germany*, diſplaced his Legate or Lieutenant, for refuſing to take an oath that he was not bribed. So *Tacitus* ſpeaks of a ſolemne oath, which the Senate cauſed to be taken by way of Purgation in high criminal matters.

When the *Prator*, one of the chief Magiſtrates in *Rome*, had

Ex Pollute Sigonius l. 4. c. 4. de repub. Athen.

Æſchines contra Timarchum; pag. 7. Græ è.

Plato lib. 11. de legibus.

Ariſt. Polit. lib. 3, 10.

Herodotus in Erato, lib. 6.

D. Elii Cretenſ. lib. 2. belli Trojani.

Homer. Iliad l. 19. v. 257.

Pauſanias Eliacis.

Cato de re Ruſt. c. 144, 145.

A c finali ſect. 1. de juram. calum. & c. inter ſolicitudines.

Xiphilanus in Comodo.

Tacit. lib. 2. Anal.

had made choice of 450. Judges to decide cauſes, he was to ſwear he had choſen none of them *dolo malo*, or for any ſiniſter reſpect. And much more might be inſtanced to this purpoſe, to ſhew the juſtice of ſuch proceeding. *Lex Servilia Glaucia apud Sigonium, l. 2. c. 6. de judiciis.*

CHAP. VIII.

That by the known Laws of this Land, the Eccleſiaſtical Judges were ſo warranted and commanded to give that Oath, according to the Canon and Eccleſiaſtical Laws.

ORdinaries are authorized to enquire of the Foundation, Eſtate and Government of Hoſpitals, being not of the Kings Foundation, &c. and to make correction and reformation according to the Laws of holy Church, as to them belongeth: now by thoſe Laws Enquiry touching crimes not capital is made by the Defendants oath, as is notorious and before proved, and this cannot but be penal to the parties viſited when guilty. 1 H. 5. c. 1.

Executors and Adminiſtrators are to take the oath of the truth of the Inventory; yet this may imply Perjury, or diſcovery of a mans own fault. 21 H. 8. c. 5.

Ordinaries are to enquire of, as heretofore hath been uſed by the Queens Majeſties Eccleſiaſtical Laws, about uniformity of Common prayer. 1 Eliz. c. 2.

Ordinaries may give the Oath of Supremacy to a Clerk within his Juriſdiction. 5 Eliz. c. 1.

In this Act of Perjury the Laws Eccleſiaſtical have the powers reſerved to proceed as before, which was by oaths. 5 Eliz. c. 9.

That allowance is made by Common Law to Courts Eccleſiaſtical to enquire, (and ſo conſequently by ſuch oaths) appears by two precedents of Conſultation ſet down in the Regiſter; the firſt alloweth of an Inquiſition made by the Dean of *Yorks* Official for defects in a Chancel, &c. The other beſides a conſultation conteins a commandment to the Ordinary to take full information, by way of Inquiſition and other means, touching the value of Tithes. An Ordinary proceeded againſt a Pariſhioner *ex officio*, as for a crime for Tithes

Regiſt. tit. Conſultation, fol. 48.

Ibid. fol.

Ibid. fol. 51. b.

Ibid. fol. 49.a. Tithes deteined by him. *Ad correctionem animæ*, the Ordinary proceeded againſt a Lay-man for Uſury, even at the inſtance of a party grieved: ſo in ſeveral other caſes, as in the ſame Regiſter mentioned, fol. 43, 50, 51, 54, 55, 57. Upon the cavils of ſome buſie people againſt Oaths miniſtred in Courts Eccleſiaſtical and Temporal, a Conſtitution Provincial was made againſt it: *Let no man*, ſaith that Conſtitution, *preſume to diſpute, &c. againſt Oaths, which are made either in Eccleſiaſtical or Temporal Courts, in caſes accuſtomed, and in uſual manner, &c.* By this appeareth the practice of ſuch Oaths in both Courts: and *Quintilius German* in *Henry* the Eighths time, who wrote againſt ſome Provincial Conſtitutions, allowes of ſuch Oaths to be taken. Many more inſtances hereof may be given, but it being apparent and notorious, that ſuch proceeding *Ex officio*, and at the inſtance of the party, and Purgation in manner as before, was conſtantly practiſed in the Eccleſiaſtical Courts, according to the Canons, Conſtitutions, and Laws Eccleſiaſtical, before 25 *H.*8. and by the aforeſaid Statute of 25 *H.*8. ſuch Laws and practices have been confirmed, not being contrariant to the Kings Prerogative, or the Law of the Land: And it appears that in ſuch caſes, according as is practiſed in the Eccleſiaſtical Courts according to the Eccleſiaſtical Laws, it is ſo far from being contrariant, that it is moſt conſonant, and allowed and commanded by the Temporal Laws of the Land.

Conſtitut Provinc. de hæreticis, c. nullus.

A Treatiſe touching Conſtitut. Provinc. and Legatine, c. 23. printed by *Tho. Godfrey.*

ſay, it appearing by the Acts and Records of Eccleſiaſtical Courts, that ſuch proceedings were ſo conſtantly upon oath; there needs no more be ſaid for juſtification thereof, but it may ſafely be concluded, that (before the making of that late Act) the Common Laws and Statutes of this Realm allowed ſuch Oaths to be tendered by Eccleſiaſtical Judges; and therefore the oath of the party, in ſome matter of crime that might be damageable and penal to him, was both in practice, and was allowed alſo to be practiſed (in Courts Eccleſiaſtical) by the Laws of this Land.

CHAP.

CHAP. IX.

That Oaths adminiſtred to parties touching matters damageable, criminal and penal to themſelves, are urged and required by Temporal Courts, and by the Laws of the Realm.

IN the Chancery, when the proceeding is moved *civiliter*, and not *criminaliter*, not to any publick puniſhment, but to the private Intereſt of the party, and ſometimes lewd practiſes and miſdemeanours criminal be in the Bill ſet forth; yet muſt the Defendant make particular anſwer thereto upon his oath. So in the Court of Requeſts, in the *Marches of Wales* the Court of the Council there, and in the North parts; ſo that to the intent of a Defendants being urged by oath (ſomtimes) to diſcover himſelf in a matter criminal, it cometh to as much in theſe Courts, as is challenged for unlawful in Courts Eccleſiaſtical: and the Chancery muſt needs be the ancienteſt court of this Realm, becauſe from thence all original Writs and commiſſions do come, whereupon the other courts do ground all their proceedings; therefore probably, as in ſundry other points of proceeding there, they drew the exacting of the Defendants anſwer upon oath from the Civil Law: For that court of Chancery being here in time and nature the firſt, (after the *Roman* yoke, before the coming in of the *Saxons*, was ſhaked off here) it could not take light from other courts of the common Law, but from ſome other, that was before both it and them. The *Romans*, under whom we were then, gave us theſe Laws moſt probably; ſo they uſed, as their Hiſtories teſtifie, to moſt Provinces they ſubdued. Many of the ſame Laws were taken up and retained by the *Saxons*, eſpecially untill the coming in of the *Norman Conqueror*, who eſtabliſhed the cuſtoms of *Normandy*. Amongſt others they retained, till then, that Law was one, *That all brethren ſhould participate alike their fathers Inheritance*. We read of *Trebatius*, an ancient civil Lawyer, often mentioned in the *Pandects*, (who lived in *Julius Cæſars* *Cicer. famil. ep.*

time, before our Saviours birth many years) did remain at *Samarobrina* in this Iſle of *Britain*; and afterwards that famous Lawyer, *Æmilius Paulus Papinianus*, did profeſſe the Law, and kept his Tribunal ſeat at the city of *York*.

Forcatulus.

For the court of Star-chamber and High-commiſſion, I mention not the proceedings there, becauſe thoſe courts are taken away, though (as before) perhaps the want of them, eſpecially if in ſome things regulated, will by many every day be more thought of: the proceedings there are in freſh memory, to have been in like manner upon oaths in criminal cauſes.

In all the courts of Record at *Weſtminſter*, do not the Judges by corporal oath examine any perſon, whom they have cauſe, in diſcretion, to ſuſpect to have dealt falſly about the return of any Writ, entry of rule, or ſuch like matter, not being capital? *Men are to be aſſeſſed, and ſworn to have ſuch aſſeſſed Armour in their houſes.*

13 E. 1. ſtat. *Winton.*

(*a*) The Kings Widows ſworn not to marry without the Kings Licenſe, (*b*) Labourers are to take an oath to do the labours appointed, &c. and if they refuſe they are to be put into the Stocks. (*c*) Another Statute much to that purpoſe. (*d*) The Sheriff may upon oath examine the chooſers of Shire-Knights for Parliament. (*e*) Thoſe that ſhip over Woolls may be put to their oath by the Mayor, &c. and ſeveral more, as 11 *H.*7.33. 51 *H.*3. 27 *E.*3.6. 23 *Eliz.* 6. *&c.* all which oaths, though neceſſary and equal, may bring great damage to the party.

(*a*) 17 E 2. Prerog. Reg. c.4.
(*b*) 25 E.3. de ſerv. c.2,7.
(*c*) 27 H.4. c.17.
(*d*) 8 H 6.7.
(*e*) 27 E.3. ſtat. ſtaple.

Other Statutes there are, that may tend to make the party diſcover even matters criminal or penal to himſelf. The Statute of Inquiſition upon Coroners, the Enquirers ſhall make all the Bayliffs ſwear, *That they ſhall well and faithfully do that which they have in charge by the King and his Council, and that they ſhall conceal nothing of it.* This is general, and may be penal to the Bayliff.

Stat. de Exon. de inquiſition. ſuper coronator. & 14 Ed. 1.

Mayors and Bayliffs in every Port where *Merchants and Ships be, ſhall take an oath of Merchants and Maſters of Ships, that they ſhall do no fraud againſt that Ordinance touching Money.* This may be penal too, and to diſcover their own guilt.

E. 3. ſtat. de mone. a c. 9.

The

The Statute 19 *H.7.c.*14. gives authority to divers great perſons, to examine Defendants informed againſt for certain offences, and breach of Statutes, as well by oaths as otherwiſe, by their diſcretion, and to adjudge, &c. In ſeveral other Statutes, where it is ſaid to examine, is meant upon oath, otherwiſe it could not be ſo underſtood of the Witneſſes; as 18 *E.*2. 11 *H.*7.23. 19 *H.*7.14. 3 *H.*7.1. 21 *H.*8. 10. 5 *Eliz.*9.

Vintners put to their oaths, whether they keep their wine to ſell by retail or in groſſe. 24 H. 8.6.

Concealers of Bankrupts goods to be examined upon oath, &c. 34 H.8.4.

The Lord Chancellor *ex officio* to give the Oath of Supremacy to whom he thinks fit: this may be penal to the refuſer. 5 Eliz. 1.

Such as be ſuppoſed to be parties and privy to the fraud uſed in conveyances by Fugitives over the Seas, may be examined upon their corporal oaths, &c. the refuſers to be fined. In which, as in the other Statutes, it is evident, that it may many wayes happen, that ſuch oaths may tend to the urging them to diſcover matters criminal and penal to themſelves, that are appointed to take them: and the four laſt alledged concern oaths given, where neither Bill nor yet Information is preferred againſt the parties examined, and therefore to be tendered more then *ex mero officio*. 13 Eliz.3.

In matters that induce damage to him that ſweareth, there be ſundry examples at the common Law; one or two may ſuffice. A woman covert Baron (being to acknowledge a Fine) if it be doubted whether ſhe be 21. years of age, ſhe ſhall be examined upon her oath. T. 25 E.3.fol. 44.

In an Action of Detinue of goods, the Plaintiff was examined where they were delivered. P. 3 H.6.38.

A Plaintiff examined where an Obligation, which he pleaded, was made. H. 3 H.6.30.

Sheriffs, Stewards of Liberties, Reeves, Bedel of Strayes and Waiſes, Rent-gatherers, &c. or other Accomptants to the Prince, or other great Lord, are uſually urged to their Accompts upon their oaths: this may be penal and ignominious to them.

Stamford Pleas of Crown, l. 3. c 14. In an Appeal of murther (as before) the defender muſt before battail ſwear his innocency.

M. 34 E. 3. fol. 3. One ſworn of a Jury, and departing from his fellows, and returning, was by the Judges *ex officio* examined upon his oath, whether he had talked with the Defendant.

T. 7 H. 4. fol. 19. A Tenant of Land was examined by the Judges, whether he confeſſed the Action of the Demandant by covin, which was found.

P. 9 H. 5. 1. A woman that brought an Appeal for the death of her husband, but ſuppoſed by another name then ſhe had indeed, was hereupon examined.

H. 25 H 6. & Fitz H. Abridg. tit. ex-aminat. num. 17 A ſuſpected Jury to have received a letter from the Defendant, were all examined upon their oaths.

* M. 35 H. 6. 11. * A Sheriff examined ſuppoſed to have made a falſe return,

† *Brooke tit. Ley-gager, num.* 77. †They have a cuſtom in *London*, allowed good by the Common Law, to cauſe the Plaintiff to ſwear to the truth of his Declaration; which if he do, then the Defendant is condemned; if the Plaintiff refuſe, he is barred.

19 H. 6. 43. The like Deciſory Oath at Common Law, which is peremptory to the Plaintiff, and ſo is the Wager of Law *ex parte defendentis*.

44 E. 3. 41. In an Action of Detinue for a Cheſt ſealed, with certain Gold, Silver, &c. the Defendant tender'd his Law, (that is, his Oath) *Quod non detinet*, and the opinion of the Court was, he ſhould have it.

Dr. *Coſens*, chap. 3. in the third part of his Apology, writes thus: *The grand Jury* (as I take it) *have their oath given to enquire and preſent, their own, their fellows, and others faults.* And Part 3. chap. 14. he ſayes, that at Aſſizes and Seſſions Grand Juries *are urged by oath to enquire and preſent Treaſons, Murthers, and other Felonies, breach of the Peace, violation of ſundry Laws and Statutes, common Nuſances, &c. Now if one of the Grand Jury, being to be ſworn, would deny to take the Oath, except he might have ſome certain offences (uſually given in charge) left out and forepriſed ſeverally out of his Oath, leſt otherwiſe he ſhould thereby be driven to accuſe himſelf: Or if one ſuppoſed moſt able to give evidence to the Coroners Inqueſt, upon a murther committed, ſhould deſire to be ſpared from telling his utmoſt knowledge thereof*

upon

upon his oath, leſt thereby he be driven to accuſe himſelf: would the Judges ſpare them, and not rather repute them to be guilty of theſe crimes, for which they refuſe to take oath and diſcover their knowledge? And why not then, other men ſhould not, upon crimes nothing ſo penal, who refuſe to take the oath to anſwer them, be judged by any man to do it upon good ground and conſcience?

If a Tithingman refuſe to make Preſentment, the Steward of the court may amerce him. 10 H. 6. 7.

Chief Conſtables and Bayliffs were to give evidences upon their oaths, touching unlawful Retainers, within the precinct of their Offices, and upon concealment were to be puniſhed. And many more ſuch. 19 H 7. c. 14.

Therefore hereupon may it not be concluded thus? That whatſoever the Eccleſiaſtical Laws do allow and require, being not contrary nor repugnant to the Prerogative Royal, nor to the Laws Statutes and cuſtoms of this Realm, that may be lawfully practiſed by Judges Eccleſiaſtical. But this oath is ſuch, by reaſon that ſundry Temporal courts (by Law) hold the like courſe, and do not prohibite it in Courts Eccleſiaſtical; ſo that not being ſo much as divers courſes, they cannot be contrariant or repugnant, therefore theſe oaths were lawfully practiſed in courts Eccleſiaſtical: or thus, That which is juſtice and equity in one court, cannot be unjuſt, unequal, or cruel in another court, that is thereunto no leſſe authorized than the firſt: But ſuch be theſe Oaths, as appeareth by the practice of the aforementioned Temporal courts, therefore they are lawful and equal alſo in Eccleſiaſtical courts.

CHAP. X.

The inconvenience and hurt that probably may follow, by the forbidding the miniſtring of an Oath Ex officio, *or any other Oath, whereby ſuch perſon, to whom the ſame is tendered or adminiſtred, may be charged or compelled to confeſs or accuſe, or to purge him or her ſelf of any criminal matter or thing, whereby he or ſhe may be lyable to any cenſure or puniſhment. Praiſe of the Civil Laws. Civilians firſt, and laſt, and greateſt Sufferers. Amity 'twixt both Robes. His Majeſties and the Lord Chancellors favours to Civilians.*

DOctor *Coſens* hath touched upon ſome of ſuch inconveniences in general, not much in particular, *ſparsim* in that his Apology, but not in any one diſtinct chapter. Some of ſuch as I have thought of I ſhall ſet down.

That Evil ſhould be removed is often inculcated in holy Writ, and that right and juſtice ſhould be done in all cauſes, as well criminal as civil, publick and private, all Laws ſacred and prophane command: this tending to the well-being, even the being of all Kingdoms, Commonwealths and Governments whatſoever; as the contrary to the deſolation and deſtruction thereof, and of all commerce and humane ſociety. That in reſpect of the whole Church and Commonwealth puniſhments are moſt needful; the ſacred Writ ſhews it, and gives many examples, where for the ſins of a few, whole Armies and Societies have been puniſhed. *Achans* ſtealing of the accurſed garment, &c. was a cauſe of the overthrow of *Iſrael* in battel. So for the ſin of *Eli* and his ſons, many thouſands of the *Iſraelites* were ſlain by the *Philiſtines*. *Salomon* giving charge to kill *Joab*, ſayes, *Smite him, that thou mayeſt take away the blond which Joab ſhed cauſleſs, from me and the houſe of my Father*. And for *Jonas* his diſobedience the whole Ship was in danger to have periſhed. The Heathen could ſay, *Juſticia eſt Reipublicæ baſis*. *Ariſtotle* could ſay, that puniſhment

Joſh. 7.

1 Sam. 4.

1 Kings 1, 2.

Ariſtot. Rhetor. Tocodor. c. 14.

ment is a remedy to be uſed againſt faults; and *Caſſiodor, Remedium eſt contra peccatum accelerata correctio.*

For all crimes and offences are but as ſo many Maladies and diſtempers in the body of the Commonwealth, which if ſuffered to grow without the curb of Law, will quickly like a Canker diſperſe, either to the deſtruction or eminent danger of both: So that the neceſſity of puniſhment, and forcing juſtice to be done, both in civil and criminal cauſes, by the very ends unto which it is referred, clearly appears. (a) *Charitas non eſt ſed languor, ubi mali mores digna pœna non caſtigantur.* (b) *Error, cui non reſiſtitur, approbatur.* (c) *Malum, cum perſeveret, augetur.* (d) *Tanto ſunt graviora peccata, quanto diutiùs animam detinent illigatam.* Tully ſayes, e) *Impunitatis ſpes, magna peccandi illecebra.* (f) *Quæ eſt iſta miſericordia, quæ bonitas tui parcere, & omnes in diſcrimen adducere?* The very Light of Nature did teach even Heathen men thus, (g) *Intereſt Reipublicæ delicta puniri:* and (h) *Pœnas ob maleficia ſolvi, magna ratio ſuadet.* Now, if upon ſuch weighty reaſons, it be moſt needful that Juſtice be duly adminiſtred, and crimes puniſhed, (for in criminal matters the greateſt care is to be had, though no neglect neither to be in commutative and diſtributive juſtice to have that rightly performed) it muſt be granted, that all due and good means may be uſed to attain that end: *Qui dat finem dat media ad finem.* (i) *Peccata nocentium expedit eſſe nota.* Now when crimes ceaſe to be ſecret, but are by fame, or by ſuch wayes as is aforeſaid, ſo far diſcovered; if there be (as very often there is not) no other way to diſcover them, that ſo the evil and the ſcandal may be taken away, but by putting the party to his oath, thereby to clear himſelf, if further due proof thereof cannot be made; or by refuſal of the oath to be taken *pro confeſſo*: then it follows, the evil and ſcandal muſt ſtill remain, and all the ſad effects thereof to Church and State may be expected to follow.

(a) *Aug. in ep. Joan tract. 7.*
(b) *Idem ep. 50 ad Bonifac. c. error. dist. 83.*
(c) *Caſſiod l 2. var. epiſt 14.*
(d) *C. cum Tanto de conſuetudine.*
(e) *Cicer. pro Milone.*
(f) *C. ſed. And. dist. 45.*
(g) *F. ad l. Aquil. l. 1. a vulnerat.*
(h) *H. de fide pur. l. 7. ſect. final.*
(i) *F. de injur.*

Be the fame of a crime, Adultery or the like, never ſo pregnant, that Town and countrey, even the Kingdom ring of it: though an Adulterer and Adultereſſe have cohabited together a long time, yet if they were not taken or ſeen *in flagranti crimine*, or ſeen in bed together, which is a violent preſumption, equi-

equivalent to a proof; and the parties deny the fact: ſome make it diſputable, whether or no any manner of puniſhment (the fact being neither proved nor confeſſed) can be laid upon the parties for this great ſcandal to the Church.

Some hold, that by the words of this late Act, that an innocent party, upon whom a fame is unjuſtly raiſed, and the beginning of it cannot be found, as often hath happened, yet though he offer to purge himſelf, the Eccleſiaſtical Judge is not to tender or adminiſter the oath to him; though this ſeems otherwiſe, becauſe the oath is forbidden but onely in ſuch caſes, *whereby the perſon to whom the ſame is tendered or adminiſtred, may be charged or compelled to confeſs or accuſe, or to purge him or her ſelf, of any criminal matter or thing, whereby he or ſhe may be lyable to any cenſure or puniſhment.* But in this caſe of voluntary offer to take the oath, that reaſon of cenſure or puniſhment ceaſeth.

Reg. juris. *Volenti non fit injuria neque dolus.*

Such courſe by way of oath to find out the ſin being forbidden, how great an encouragement it may prove to commit ſuch ſins, is obvious to the eaſieſt judgment. It was extreme to make Adultery puniſhable by death, though that extreme be to be avoided, the contrary too muſt be ſhunned.

If it be lawful at common Law, as in a Wager at Law, and many other caſes, as before touched, to tender and adminiſter ſuch oaths, and in ſuch cauſes as need it not ſo much, as theſe cauſes ordinarily do; wherein before that late Act it was adminiſtred in Eccleſiaſtical courts: then why not in Eccleſiaſtical courts? Except it be ſaid, that the ſame courſe ſhall be taken to forbid it alſo at common Law, which, I ſuppoſe, is not intended; ſince Jury men, as Dr. *Coſens* (as before) in that his Apology affirms, had an oath given them to *preſent their own and their fellows faults.* Now ſuch in Eccleſiaſtical proceedings.

The inequality of the puniſhment as to the difference of Sex. Indeed the permiſſion of puniſhment as to one Sex, the Man, and the puniſhment to the weaker Sex, the Woman, who

who therefore deſerves more commiſeration: that inequality, I ſay, cannot at beſt but ſeem ſtrange. For the man will alwayes probably (except either by Gods grace he will glorifie him, by confeſſing his fault; or elſe, as before, be taken *in flagranti crimine*; or with ſuch violent preſumption as before) eſcape puniſhment though never ſo guilty: It is *peccatum concatenatum*, there muſt be two to act it. In that ſin the man without the woman, or the woman without the man, ſignifie no more then the letter *q* without an *u* following it, to make it intoto a ſyllable. As for the man, his crime is *tranſiens*, leaves no *veſtigia* behind it to diſcover him: not ſo oftentimes in the woman, the infallible *indiciũ* of her fault, her *crimen manens* appearing to every eye, though ſhe is no more guilty thereof then the man: whom if ſhe rightly name or accuſe, yet that works nothing againſt him, except to keep the Baſtard child as the reputed father thereof; wherein not a few light women probably name not the right father; ſo her ſingle teſtimony ſerves to puniſh either the right or wrong father, but not to take away the ſcandal or evil cauſed by the man that offended. Our *Engliſh* Nation hath been accounted very friendly and favourable to the weaker Sex, and very many are the privileges and honoraries we give them more then in other Nations; for which in the opinion of generous minds we are accounted more honourable then others; inſomuch as ſome have ſaid, *If there were a bridge 'twixt* Dover *and* Callis, *all the women in the Continent would come into our Iſland.* But by this we may ſeem to hazard that honour.

In Simony, Uſury, and many other crimes of Eccleſiaſtical cogniſance, be the fame, circumſtances, ſuſpicions, and all other inducements never ſo ſtrong; yet this Oath being not to be adminiſtred, the offender ſcapes, neither the evil nor ſcandal is removed.

Biſhops by the Statute 1 *Eliz.* 1. are to give the Oaths of Allegeance and Supremacy *ex officio* to others, or whether it be *ex officio* or *ad inſtantiam partis*, the matter is all one; 'tis forbidden to give it to any perſon, whereby he may *be charged or compelled to confeſs*, or accuſe, or to purge him or her ſelf of any criminal *matter or thing, whereby he or ſhe may be*

lyable to any cenſure or puniſhment. The refuſal of this oath is penal, and perhaps the perſon was ſo accuſed to the Biſhop, or there was a common fame thereof, or other ſufficient inducement to enquire thereof; if the party refuſe to take this oath thus tendered to him, then is he by the Law lyable to *cenſure and puniſhment* for it: and I conceive it is not thought fit, that ſuch a perſon, be he a Recuſant of what kind ſoever, ſhould plead this Statute, that this Oath ſhould not be tendered to them.

By the Law all Biſhops and Eccleſiaſtical Judges, when they give Inſtitution into Benefices, or give licenſe to preach, teach ſchool, ſerve Cures, and in other caſes, are to give to the parties the Oath of Allegeance and Supremacy: ſhould theſe parties refuſe to take theſe oaths, it were penal to them.

When the Biſhops make their Chancellors, Commiſſaries, Advocates, Regiſters, Proctors, or the Deans and Chapters, their Commiſſaries, Officials, or *Audatores cauſarum*, or the Archdeacons their Officials, or any other Eccleſiaſtical Officers whatſoever, the ſame oaths are to be given them: ſhould theſe parties refuſe to take theſe oaths, it were penal to them. So a greater part of the courſe of proceeding in Eccleſiaſtical Courts is taken away, then perhaps many think of.

So in the Oath of Calumny and of Malice, to be tendered in the proceedings in Eccleſiaſtical Courts; if the party refuſe to take them, 'tis penal to him. And in many other caſes, eaſie to be enumerated, but this may ſuffice.

The guiltleſs and innocent have no benefit by taking away this oath, eſpecially that of Purgation; nay, (admitting that which, as above, ſome affirm, That though they offer to take the oath of Purgation, the Eccleſiaſtical Judge is not to miniſter it) in that caſe they are endamaged by it, and cannot make their innocency appear in ſuch a way and means as the Law did afford, and to be reſtored to all intents and purpoſes to their good name and fame, of which they were in a great part (though unjuſtly) bereaved; and might have a good Action againſt any, that after ſuch Purgation defamed them.

The

The guilty hereby eſcapes puniſhment, which he may in ſome ſort *lucri loco reponere*, if it may not be ſaid of him as *Virgil* of the ſtinging Bee, *animam in vulnere ponit*. The rule of Law is, *Nemo ex delicto conſequitur beneficium.* *Reg. juris.*

The great Hypocriſie of thoſe Innovators and Fanaticks in Queen *Elizabeths*, King *James's*, and in the late bleſſed King and Martyrs reign, King *Charles* the Firſt, (to go no further) that then preſſed the taking away of that Oath, and ſome of them we have ſeen go much further of late; who would be thought to be, and ſo hold it forth, that they are the greateſt Zelots to have thoſe ſins puniſhed, that by that means would eſcape it; yet cry, like the *Lapwing*, furtheſt from their neſt; they would not have the means left to find them out, that ſo they might be puniſhed: and other uſe for their ends (which we have ſadly felt) they made of it, as is touched above. Herein they ſomewhat reſemble *Julian* the Apoſtate, ὁ μισοβάτης. He would ſeem to be a hater of a long incompt Beard, and entitles that Tract of his Μισοπώγων, *An hater of Beards*; and yet he ſayes there of himſelf, Περόνησα τὸν βάβλον τοῦτον πώγωνα, &c. τοῦλα διαβόλου ἀνίχνευμα ἀπὸ ὄνειῶν ὅσῳ ἐν λοχμῷ ἀπὸ ὄνειῶν. *Longam iſtam barbam addidi, &c. ideo diſcurrentes in ea pediculos perfero, tanquam feras aliquas in ſylva.*

Many other inconveniences and hurts, that too probably may be feared to ariſe from the prohibition of theſe oaths, in ſuch caſes as before, might upon further conſideration be enumerated: and though in the laſt place, yet even that too, of adding further diſcouragement to the profeſſors of the Civil and Eccleſiaſtical Laws, who have not had a few for a long time together, may perhaps deſerve to be thought upon. It is too viſible that there are not a few, that would not have them enjoy ſo much of practice and power, as that without which the State can ſcarce ſpare them, that is in maritime cauſes touching Traffick and Commerce with Forreigners; a point eminently conſiderable as to the benefit of this Nation. For the Law it ſelf, ſurely all Scholers and ingenuous men, of what Robe or Profeſſion ſoever, cannot but honour it for the Antiquity, and in a ſort Univerſality, and Excellency of it, and the great number of Nations, and ſo many, and

noble, and well-civilized exerciſe, that were anciently, and in great part, and yet are governed by the rules thereof, and the helps received from it even by our own Nation too; many wayes demonſtrable. Before our Saviours time, as is touched before, in the time of *Julius Caſar*, *Trebatius* an ancient Civil-Lawyer, and often alledged in the *Pandects*, remained at *Samarobrina* in this Iſland of *Britain*; and after that the Oracle of that Law, *Æmilius Paulus Papinianus*, profeſſed the Law, and kept his Tribunal ſeat of Prætorſhip in the City of *York*: and no inconſiderable part of the Municipal Laws of our Nation have flowed from that Fountain, and drawn many Rules and Maxims thence. So that it may, as that learned Civilian, Sir *Rob. Wiſeman* Knight, Doctor of the Laws, His Majeſties Advocate general for the Kingdom of *Engl.* in that Treatiſe of his of the Excellency of the Civil Law, be truly ſtyled *The Law of Laws*; and as it was ſaid to that *Roman* orator highly commending Eloquence, that he lifted her up to the skies, that he alſo with her might be raiſed up thither; ſo he in that learned and judicious Tract of his, ſetting forth the due and juſt honour and *Encomium* of the Civil Laws, deſerves to be thereby perpetually honoured. And for the profeſſors of the Civil Law in this Nation, their ſhare of ſufferings in theſe late tempeſtuous times was the earlieſt, began firſt, ſome years before the Loyal Clergy were deſtroyed: For upon the paſſing that Act for the taking away the High Commiſſion, in the tail of it was that ſting, which (as the then more powerful part interpreted it) took away the coercive power from the Eccleſiaſtical Courts, and ſo in a manner made them uſeleſs and precarious, if not ridiculous; and within a very few dayes after paſſed that Act for Poll-money, where every Eccleſiaſtical Judge, that had any Eccleſiaſtical Office of Judicature, (though ſome of thoſe places were not worth 30 *l. per annum*, nor 20 *l. per annum*, and ſome leſs) paid 15 *l.* a greater ſumme then ſome men paid of 10000 *l. per annum*, and more in Land of Inheritance: So ſharp-ſighted was that Act towards that then in a manner even ruined profeſſion. The reaſon of it was viſible enough, and no wayes diſhonourable to that profeſſion or profeſſors, who acted juſtly

Cic. famil epiſt.

Forcatulus.

juſtly according to the known Laws of the Land; had they done otherwiſe, ſurely they had not wanted legal puniſhment, as the times then were, and the cry that was then unjuſtly raiſed againſt them; when the furious flame of Civil war broke forth, that waſted the Church, all loyal Churchmen, and all that had dependance or relation to them, in regard of any Offices or Places, as moſt, if not all, Civilians had then. As to the Civilians, *Sublatum fuit queſtionis ſubjectum*, their Offices and Places were quite taken away. Indeed the moſt reverend Fathers the Lords Archbiſhops and Biſhops, with Deans, Chapters, Archdeacons, and other Dignitaries in Cathedral and Collegiate Churches, taſted of the ſame cup, were *A la mode* then, but not ſo ſoon as the Civilians, root and branch deſtroyed: but the Beneficed Rectors and Vicars that for their Loyalty were thruſt out of their Benefices, had a ſmall pittance reſerved them, (though when paid at all, miſerably ſhrunk and leſſened almoſt to nothing) that is, as they called it, the Fifths of their Livings: But as to the reverend Prelates and Dignitaries, and the Civilians, there was nothing left, under ſuch pitiful Step-fathers, were the then nick-named Fathers of their Country, the prevailing party in that Long Parliament, during the time of the long continued uſurping Power, even till His Sacred Majeſties happy Reſtauration; thoſe cauſes and buſineſſes, which of right ought to have been agitated and diſpatched by Civilians in their ſeveral Offices and places, many of them, as cauſes of Defamation, Matrimonial cauſes, Tithes, if not Legacies alſo, and ſeveral other branches of Eccleſiaſtical Juriſdiction, were all along diſpatched at Common Law or Chancery, contrary to all Law and equity; Probate of Wills, and granting of Letters of Adminiſtration, with all the connexes and incidents thereunto belonging, and from thence ariſing; were by Commiſſion from that uſurping Power, committed to a few perſons of their own gang at *London*, ſo that the Subjects from all parts of the Kingdom were to prove the Wills of the dead, and take Adminiſtration of Inteſtates Goods, paſſe their Accompts, and act the reſt concerning them, there before them at *London*. The Executors and Adminiſtrators

miniſtrators muſt either come up thither perſonally to them, to take their oaths, or elſe have Commiſſions down into their Countries to do it; and the charges to the Subject for ſuch Probate of Wills, Letters of Adminiſtration, and the reſt, whether they went up themſelves to *London* to diſpatch them, or more eſpecially if they ſent up by others thither to have them done, as moſt commonly they did, and not ſcare one in forty did otherwiſe, and it was the cheapeſt way probably for them ſo to do, in regard of the charges, to ſend up by others that alſo had other buſineſs of their own there: Yet, I ſay, by theſe means, and the great Fees taken, the charges for proving every Will, taking Letters of Adminiſtration, and the reſt, came ordinarily to about ſix times (ſometimes much more) as much as was taken and due before theſe troubleſom irregular times, by the Eccleſiaſtical Judges and Officers to whom of right they appertained: that is, the Fees and charges uſually came to 50 *s.* or 3 *l.* or 4 *l.* or 5 *l.* and ſometimes to 6 *l.* or more. Had ſuch a Grievance, and ſo general throughout the Kingdom, reigned in the time of Kingſhip, when faithful and peaceable men acted according to the known Laws of the Land; ſurely the fall of *Nilus* to the *Cadupes* would not have made ſuch a noiſe, as our factious Stentors would have then bellowed out. And too much of the grievance ſtill remains, ſuch Wills, Inventories, Bonds fo Adminiſtration, with the dependancies thereupon, remaining ſtill at *London*, whether the Subject, when they have occaſion to ſee or uſe any of them, or ſue for any thing concerning them, muſt either perſonally repair or ſend for them, or ſue there: which is well hoped will by this happy Parliament be remedied, and a courſe taken that they may be tranſmitted into every County whence they came, for the Subjects eaſe, and that they there may ſue upon occaſion, for any Legacy or other matter concerning them. Should it be demanded at whoſe charge this ſhould be done; the dictate of Reaſon, I humbly conceive, anſwers it; *Qui commodum habet, idem & onus habere debet.* And thus for no ſmall number of years our Places, our Livelyhoods, were unjuſtly taken from us, onely for our Loyalty; whileſt others, that did it, gloried

in

in their ſhame, took our bread out of our mouths, and did eat whileſt we faſted and well nigh ſtarved; and yet ſuch is the unſatiableneſſe and unreaſonableneſſe of ſome of our cauſeleſſe perſecutors, that they could well be content we ſhould ſtill continue in the ſame oppreſſed and miſerable condition: And when His Majeſty was happily reſtored, (for which all thanks, praiſe and glory be ever rendred to the God of miracles and mercy) the Civilians, as they were (as is before touched) the firſt and earlieſt ſufferers, ſo were the laſt (not a ſmall time after the moſt reverend Biſhops, and eſpecially after the reſt of the Loyal Clergy were reſtored) that were re-admitted to their places and Offices; and when that was done, ſtill for a conſiderable time they were but precarious, and of little uſe or value as before, till the doubt touching coercive power was by Parliament taken away, which was not till the later end of Summer 1661. and then with the *Proviſo* againſt the Oath *Ex officio* and Purgation, which not a little diminiſhes theſe Offices, beſides upon reaſons known, the forbearance of the full execution of ſuch Offices, as yet, ſo far as by Law they might execute them, is conſiderable.

Some Civilians, who in contemplation of their natural duty, and of their Oaths of Allegeance and Supremacy, ſerved His Majeſty in his wars againſt his then rebellious Subjects, thereby loſt all their Fortunes both real and perſonal, that their enemies could find: and certainly never were more ſedulous and rigid ſcrutators, or more rapacious Harpies, that would not let ſcarce any thing paſſe their clutches.

Non fuit Antolyci tam piceata manus.

And ſuch ſuffering Civilians, both ſo in their Livelyhoods, their *quotidianum*, and their perſons and liberties very often, humbly hoped when a time of re-ſettlement ſhould come, that they ſhould have been looked upon as well as others of the ſame profeſſion, that ſate ſtill, underwent none of theſe dangers or hazards, nor ſuffered perhaps any thing, or but little in their Eſtates or otherwiſe, eſpecially in compariſon with

with the others, or as well as others that had ſome competency by reaſon of practice under the uſurped Powers, as to take and execute Offices under them of great benefit, and I had almoſt ſaid that way, if not otherwiſe alſo, immediately acted againſt His Majeſty and his Authority, contrary to their natural duty, and Oaths of Allegeance and Supremacy. To plead before the uſurping powers, even after the end of the war, it was not, at leaſt for a long time, permitted to thoſe Civilians of the Kings party, eſpecially thoſe that had ſerved him in his wars here. For my own part, though I could never ſatisfie my Conſcience ſo far, as to plead before any of the uſurped powers, not ſo far to acknowledge their power, though ſome years before His Majeſties happy reſtauration, I was both here and in *Ireland* invited and deſired to do it, yet I would not do it, nor ever did that way or any other give any acknowledgment of their power, or touch any of their Pitch, more then by a forced acquieſcence, and ſitting quiet and ſtill when I was conſtrained ſo to do. Yet, I ſay, I am far from cenſuring any of theſe worthy and learned perſons of either Robe, that did either *agere* or *defendere* before that uſurping power, by way of pleading: I would not be miſ-underſtood, as to be thought ſo much as to think amiſſe of the noble Profeſſion or Profeſſors at Common Law, both which I love and honour, and do very well know, and have heard many of them, ſuitable to their Births, Breedings, and loyal and generous Minds, commiſerate the oppreſſion of the Profeſſion and Profeſſors of the Civil Law, and wiſh that the proceedings in the Eccleſiaſtical Courts, by the Oath *Ex officio* and Purgation, might continue as it was before that laſt Act that took it away; even for the juſtice of it, as they conceive, as alſo leſt it might ſeem, at leaſtwiſe in ſome mens judgments, to favour of a kind of partiality, that theſe Oaths *Ex officio* and Purgation ſhould continue in proceeding at Common Law, and not in the Spiritual and Eccleſiaſtical Courts, or Courts Chriſtian, as at Common Law by the Laws of the Land they are ſtyled; a Title we like well, and ſurely that Nick-name, ſuitable to ſuch debauched and diſſolute perſons that gave it, becauſe in theſe Courts their unclean

crimes

crimes were puniſhed, and that did *commovere bilem*; though they were puniſhed there onely, as before, Medicinally, to acknowledge their crimes, to aske God and the congregation forgiveneſſe, and to take away the evil and ſcandal, and not mulcted or corporally puniſhed by impriſonment or otherwiſe: I ſay, that Nick-name, ſhould it be given at all to any court, as it ought not, it would rather lean to ſuch courts as inflict corporal puniſhments and mulcts upon ſuch criminous perſons, by Impriſonment, keeping the Baſtard children, whipping, or otherwiſe corporally puniſhing them. I wiſh and hope, that as both the profeſſions of both Robes ſit as ſiſters under one Crown, derive from one and the ſame head, and draw from one and the ſame Fountain; ſo each knowing their certain bounds and limits of Juriſdiction, (which, if not clearly and explicitely ſettled, I wiſh and hope will be) may proceed chriſtianly, charitably and friendly in their ſeveral ſpheres of activity, without claſhing or the leaſt diſſention, to Gods glory, the good of this Church and Srate, and the juſt diſtribution of Juſtice, to the benefit and comfort of all the Subjects in His Majeſties Dominions. Let us all remember, that not long ſince there was a generation of men, then too much in power, that had an equal tooth againſt both the Profeſſions, would gladly have ſeen the deſtruction of both, and made too great a progreſſe in it. The noble Profeſſion and Profeſſors of the common Law, could then expect little more favour then *Polyphemus* promiſed *Ulyſſes*, that he ſhould be the laſt that ſhould be devoured. And probably enough ſome of them ſtirred up ſome of the leſſe-conſiderable common Lawyers, and ſuch as favoured their ſide too much, (for in all Profeſſions there is good and bad) to be inſtrumental in the abolition of the Civil Law; and when that was done, when the out-works were taken in, then to have a bout with the Fort it ſelf. They have ſhewed their Method: No Biſhop, no King. But concord and peace, it is to be hoped, will duly and indiſſolubly cement theſe two Profeſſions, if amongſt our ſelves we do not *ponere obicem*, and diſ-joyne the union. Let us never forget St. *Pauls* good counſel and caution; *All the Law is fulfilled in one word, even in this, Thou ſhalt*

love thy neighbour as thy self. But if ye bite and devour one another, take heed ye be not consumed one of another. For the Civilians, if they have many enemies and but few friends, (as was said by one, that 'tis hoped hath no disaffection to that profession or professors of it, but rather in a just resentment of their oppression, suitable to his birth and noble disposition) if so, I say, they may comfort themselves in this, that they were put to the test in the beginning of the Long Parliament, when their factious Accusers were sufficiently numerous and virulent, and had they been found guilty, they had not then escaped punishment, severe and infamous enough. They could not easily have been highlier justified then that way, which made it appear to all the world, that that clamorous party, through the sides of the Civilians, intended to strike at and wound their Superiors, and so serve turns and ends, and compasse their long-weav'd design. If the Civilians do their parts in their Functions, uprightly and diligently, which their own consciences doubtlesse will prompt them to, and the vigilancy of their factious Adversaries over their actions, may serve to keep them awake; 'tis to be hoped they will every way find comfort and encouragement: However that peace at the last, and the continual Feast in the interim, will buoy them up above the greatest waves of envy or malice. Good men will be their friends, though the contrary be their enemies: and one *Cato* is better then a *Theatre*. And we cannot but be confident, that we shall never have cause to say, as some said in another case; *Non nos Resp. sed defuit nobis Respublica.*

We have a gracious KING, whom God protect, blesse, and prolong his dayes:

Et Spes & Ratio studiorum in Cæsare.

He, we doubt not, will, as before him his Royal Father, *Charles* the first, King and Martyr, and his Grandfather King *James*, of blessed memory; look upon us with a favourable eye, according as he finds we endeavour faithfully and diligently to serve the Church and State, that is to serve him: they

they who faile therein deſerve not to be remembred. And beſides the general, His Sacred Majeſty hath in particular demonſtrated his gracions favour that way, by the addition of honour and honourary revenue to the Maſters of the Chancery, Civilians for the moſt part: an act that, if poſſibly there can be an addition, adds to the juſt obligation of duty, ſervice and gratitude which they owe his moſt excellent Majeſty. And all due thankfulneſſe and honour the ſame Profeſſion muſt ever acknowledge and render to the Right Honourable the Earl of *Clarendon*, Lord Chancellor of *England*, for his ſpecial favours to that Profeſſion and Profeſſors, and for his mediation and being inſtrumental (as none, I believe, can ſuppoſe otherwiſe) in the obtaining that favour and bounty to the Maſters of the Chancery, and by furthering the continuance of His Majeſties gracious inclination towards them. We bleſſe God, and His Majeſty and his Lordſhip for it, and are, I hope, and ever ſhall be moſt thankful for it, and rejoyce and comfort our ſelves in it, and

Rumpatur quiſquis, rumpitur invidia.

Now (as in the Preface) I thought fit to ſubjoyn that little Manuſcript, touching the Oath *ex officio*, with that Determination touching the ſame, by that glory of our Church, the late Lord Biſhop *Lancelot Andrews* Biſhop of *Winchester*.

A Manuſcript treating of the Oath Ex officio, *ſaid to be Doctor* Davenants, *late Lord Biſhop of* Sarisbury.

1. THat which the Commons Houſe complained of is, that the Commiſſioners Eccleſiaſtical proceed *Ex officio*, that is, (ſay they) without a known Accuſer.

2. And that they cauſe men to anſwer upon their oath, that which they would have is this.

1. That no man ſhould be dealt with, but an Accuſer ſhould ſtand forth, and that no Oath ſhould be miniſtred to a man in his own cauſe.

That which your Lordſhips have enjoyned me, is to ſhew my opinion, whether the courſes complained of be warrantable by the Word of God or no.

Two parts there are diſtinctly to be ſpoken to, the one of proceeding without a known Accuſer, the other of proceeding by way of Oath.

I begin with them generally at large, and after as they concern Eccleſiaſtical proceedings.

1. The end of all Judgments in all Courts, is to remove evil. The Heathen man ſayes, *Intereſt reipublicæ ut malefici tollantur*: the health of the civil body conſiſting no leſſe in removing evil perſons, then doth the natural in purging out evil humours. And the very ſame is Gods courſe in his Commonwealth; ten ſeveral times in *Deuteronomy* he repeats it, *Ut ſic tolletis malum de medio Iſraëlis.*

2. Evil then is to be removed, not onely civil but Eccleſiaſtical; ſo doth God take expreſs orders, that corrupt Religion, contumacy in diſobeying his Prieſt, Incontinency, Defamation, (matters all of Eccleſiaſtical cogniſance) ſhould be removed, expreſly terming every one of them *malum in Iſraële.* And ſo in the New Teſtament doth the Apoſtle ſpeak of the caſe of Inceſt; *Vos autem auferetis malum de vobis.*

Theſe-

Theſe then are evils, and Eccleſiaſtical evils, and to be removed.

3. If they muſt be removed they muſt be known; for St. *Hierom* ſaith well, *Quod ignorat medicina, non curat.* Phyſick both corporal and civil muſt know the peccant humour, before they can purge it.

4. If know it they muſt, by the parties themſelves they ſhall never know it. The firſt that ever did treſpaſs, were not ſo ready to commit ſin, but they were twice as ready to conceal it. And as *Tertullian* ſaith to good purpoſe, *Reliqui omnes congeneres primo:* All other offenders do as the firſt did, ſeek to keep their offence from being known. The offences themſelves, ye know, are called *opera tenebrarum*, and Incontinency, that defileth the body as well as the ſpiritual Whoredom, which is corruption in the Worſhip of God; either of them, we know, is *angularis actio*, and kept from knowledge as much as may be.

5. Then, if they muſt be known, and will not by the parties themſelves, ſome other means muſt be uſed to bring them to light; where if there be a party to ſtand up and accuſe, it is well, and he not to be refuſed. But we know, and I refer my ſelf to your Lordſhips, that it is holden an odious matter to be an Accuſer, and with the better ſort of men more odious: Few that be well diſpoſed will be gotten to it, and even they that will, I refer me to your Lordſhips again, whether *Salomon* ſaith not true, that *One evil will not be accuſed but out of another evil:* that is, grudge or ſpleen to wreak our ſelves upon ſome party, that we conceive hath wronged us; otherwiſe the faintneſs of men to become Accuſers will make that much evil will not be removed, if this be onely the way to remove it; but God ſaith, *All evil muſt be removed ſo near as may be.*

6. For that cauſe God hath authorized thoſe that hold Judicial places for the removing of evil, not onely to receive accuſations when they be brought againſt it, but if none be brought to make enquiry after it, in the 13, 17, and 18 of *Deuteronomy*, that by enquiry it may be found, and found it may be removed: Which Enquiry is not left at large promiſcuouſly,

miſcuouſly, hand over head, but hath his limitation upon what ground to proceed. Now, if you aske what ground we can have, no better rule for it, then if we follow Gods own proceeding in his judicial courſes; for the judgment is Gods properly, and not Mans; and there is nothing more to be deſired, then that *God would give the King his judgments*; for the judgments of all thoſe that be in place, are then beſt when they are likeſt Gods: the rather for that God, needing not to hold any courſe of Enquiry, becauſe to him all things are clear and manifeſt, not onely then but before they be done, and yet binding himſelf to a certain way in his proceeding, no other reaſon is or can be rendred, why he ſhould ſo do, but onely to inſtruct us how to proceed by his example. In Gods court, true it is, there is an accuſer allowed, even the accuſer of us and our brethren, who (we ſee) is ſomtimes heard and received, though his ſuggeſtions be untrue; as in *Jobs* caſe. But is there no proceeding but upon accuſation? I take it to be very clear, that it will fall out, divers judgments of his having been given upon another ground.

In *Adams* caſe no accuſer ſtood forth, what was done was as yet not known, onely he was taken in ſuſpicious manner, flying from God, lurking in a Thicket; which was plainly *ſpecies mali*, and God thought it meet to be enquired on: and ſo may we upon like ſuſpicion, though there be no accuſer, even by his Warrant.

In *Eves* caſe neither had ſhe any accuſer, but by examining *Adam* ſhe came to be impeached *tanquam particeps criminis*, at the leaſt; which, as we know, was by way of detection, which is not properly accuſation, yet ſufficient enough to ground a ſentence upon, as (we ſee) God did, and they that ſit in his place may do the like.

In *Cains* caſe it fell out clear otherwiſe then in *Adams*, for in *Adams* the fact was unknown, in *Cains* onely the party, for the murther was evident.

Now to find out the party, the way which God taketh is by preſumption, for that there had been malice born *Abel* by *Cain*, and he admoniſhed thereof, his very countenance bewraying as much; this did God hold cauſe enough to ground

ground an Enquiry upon, and ſo may we. In the caſe of *Sodom* there is yet another way; *clamor multus eſt*, ſaith God, there is a great rumour or fame runneth upon *Sodoms* naughtineſs, *I will go down and enquire of it*, ſaith God in expreſs words. So that whether there be accuſation or no, vehement ſuſpicion, or detection, or ſtrong preſumption, or fame will ſupply the want of an Accuſer; and the Judge even by very duty is authorized to proceed to enquire upon any of theſe.

A little to inſiſt on this of fame, whereof our Saviour Chriſt in the Goſpel hath made that a branch which we call *denunciatio Evangelica*; when a party of good credit diſcloſeth unto the Judge a fault, but will not ſuſtain either the hazard, trouble or charge of an Accuſer. Yet doth our Saviour Chriſt give warrant to the Church, even in that caſe to call the party, and take order with him. But this point of proceeding upon fame, hath not onely warrant of proceeding in Gods example, but in his expreſs charge; two ſeveral places of the Law where the ground is, *Deut.*30.12. *Deut.*17.4. *If it be told thee that ſuch or ſuch a fault is done*, the proceeding is *perſcrutando & interrogando*. *Perſcrutanda*, that is, by ſearching and evidence; *Interrogando*, that is, by interrogating the party about the fault ſuggeſted. And we ſee plainly in a caſe of Eccleſiaſtical correction for matter of Inceſt, the Apoſtle goeth no further, but layeth this for his ground, *There goeth a report, that ſuch a party there is among you.* As therefore when an accuſer offereth himſelf, he is not to be rejected; ſo though none do, rather then faults ſhould go uncenſurable, the Judge even of very duty is to ſearch them out: In his ſearch not proceeding without ſome of theſe that have been mentioned, but with theſe he hath good warrant, even as good as Gods own example and commandment.

Sufficient hath been ſaid to ſhew, that without an Accuſer a Judge may proceed by enquiry to interrogate a party, but whether upon his *Oath*, that is the ſecond point to be ſhewed, no leſs warrantable by the Word of God then the former.

In the caſe of the Woman ſuſpected to have made a fault to her husband, and that upon no other ground, but upon her husbands own jealouſie; the Eccleſiaſtical Judge was not onely

onely authorized to examine her concerning it, and then to reſt on her denyal; but alſo to put her to her oath, and make her to abjure it with execration, as it is plainly, *Num.*5. And it is a caſe of a ſin againſt the ſeventh Commandment.

In a ſin againſt the eighth Commandment, betwixt man and man: *If one had committed ought to anothers truſt*, and were perſwaded that he had played falſe with him, he might bring him before the Judge, and have the matter ſearched into, and at the Plaintiffs inſtance the Judge was to lay an oath upon him, and the other not to refuſe it. And of this there are more caſes then one, *Exod.*22. And if in private cauſes betwixt man and man this manner of proceeding be allowe d, it will follow *à fortiori*, if for the private benefit, much more that which God granteth to a private man, it is to be preſumed he will not deny to a Magiſtrate: that which to ſatisfie one party he licenſeth, he will likewiſe think meet to licenſe for the taking away of offence, and giving ſatisfaction unto many. And the chaſtity of a mans Wife ſhall never be more precious to him, then the keeping of his own Spouſe the Church, free from the like ſtains of pollution.

In a ſin againſt the ſixth Commandment, a caſe of Murther, one is found ſlain; no man can be accuſed or ſuſpected for doing it: In this caſe the Governors of the next City to the body ſo found, are by the Law to come to the place to offer a ſacrifice, to invocate the name of God, and ſolemnly to teſtifie by that Invocation, that they are no wayes privy to the murther. This is the courſe in the Law of *Moſes*, but before ever the Law was written, we ſee the very ſame holden by *Joſeph* under the Law of Nature. In a matter of State, in a ſuſpicion of a ſin againſt the fifth Commandment: It pleaſed him to charge his ten Brethren as Spies coming to diſcover the weakneſs of the Land; there was no party to accuſe or to ſay ought againſt them, yet for all that he put them to it *ſub atteſtatione juramenti*, to anſwer, They were no ſuch men.

The very like courſe was holden in the ſearch for *Elias*; he was thought to be the cauſe of the long and great drought: The King ſent all over the Land to ſeek for him, and to have him

him apprehended; theſe eſpecially that were thought to be the Profeſſors of the ſame Religion, all denyed him; it would not ſerve the turn, he put them to their oaths, and they refuſed them not, yet was there none to accuſe them at all. Yet for the good (as it was ſuppoſed) of the State, this courſe was well allowed.

So have we Interrogatories adminiſtred, and the parties ſworn to them, in caſes of the fifth, ſixth and ſeventh Commandment.

And if this may be done in civil cauſes, and be not unlawful in them, we argue that much rather it ought to be allowed the Church in her proceedings.

Firſt, for that both Commonwealth and Church be to remove evil, yet work they not both one way; for the Commonwealth, as it is well known, doth *agere ad pœnam*; the Church never ſo, but doth onely *agere ad pœnitentiam*, ſeeketh to alter mens minds, from the evil courſes they have entered into, ſeeketh by making them to yield to a voluntary ſubmiſſion themſelves, to take away the ſcandal, whereof they have been a cauſe.

Now there is great odds between thoſe, and great reaſon more means be allowed thoſe, that ſeek for nothing elſe, but the reformation of the party and his ſouls health; and thoſe that end their proceedings alwayes in the loſs of life, limb or liberty, or living, as doth the Civil.

Beſides, it is well known the civil power hath many wayes and means to ſift out the truth, though not by this, That the Church (if Accuſations ceaſe) hath none, but this onely. Indeed therefore moſt proper and peculiar to her, becauſe an oath is the bond of the Soul, and they be the ſole cauſes the Church hath to deal with.

The inconvenience is none at all: for admit a party ſhould thereby diſcloſe his offence, yet groweth thereby no damage unto him, in that his repentance onely and reformation is thereby ſought, and wrought, and nothing elſe.

Thus reaſons the Church, but for her practice taketh her ground to be full and good out of the fifth of *Numbers*, in a caſe of ſuſpected Incontinency, which is meerly Eccleſiaſti-

cal. And again, out of 1 *Esdras* 8. & 9. in a case Matrimonial, which is meerly Ecclesiastical also. In both which Interrogatories are ministred with oath, the proceeding being by Enquiry, without any Accuser at all. And that which is to be noted in the case in *Esdras*, they are no wayes forced to it, but desire to take their oath first, and be examined after. Then which there is no case more like to the proceeding at this day, against which exception is taken.

Out of these six it is manifest enough how agreeable to the Will of God this proceeding is: But beyond all this is the seventh in the fifth of *Leviticus*, where it appeareth that God is so careful to have all evil removed, as leave is given by him upon a fault committed, the party being unknown, to lay a solemn charge, and to bind it with a curse, and that at large, to take hold of any that were privy to the fault done, and did not come and reveal it.

Which course was clearly of the nature of an Oath, as doth plainly appear by 1 *Sam.* 14. where it is said four several times, that *Saul* bound all the people with an oath, not to taste of any thing till the Sun went down, that they might pursue their enemies without any intermission: Which oath is judged by the Expositors to have been nothing else but the publick denouncing of a curse, or adjuring them in the name of God not to do it, seeing it is held a thing impossible, that he should call so many thousands in particular, to take every man an oath, the time being so short, and he in such haste to pursue the Enemy. But it is a thing, as *Nazianzen* saith, not unusual, either before Christ or since, in the time of the Primitive Church, to make such adjurations, whereby the Church ever thought, *quod pœna commissi revolvitur in conscium*, that he that concealed was subject to as great a curse as he that committed it.

By all which it is evident, that such proceeding by oath may be, and is not unlawful.

This, as before, is by some said to be Dr. *Davenants*, late Lord Bishop of *Sarisbury*, and others say it was the late Lord Bishop of *Winchesters*, that most learned and pious Bishop, Dr.

Dr. *Lancelot Andrews*. Whoſe ſoever it was, it ſeems it was to give ſatisfaction to the Lords of the Council touching ſuch proceedings *Ex officio*, and upon oath; and 'tis to be believed it gave them ſatisfaction, the Law ſo long after continuing the ſame, and no wayes altered.

The Theological Determination of Dr. Lancelot Andrews, *afterwards Lord Biſhop of* Winchester, *had in the publick Divinity-Schools in* Cambridge, *in the Moneth of* July 1591. *upon this Queſtion following.*

Rendred into *Engliſh* for the uſe of the meer *Engliſh* Reader.

Whether by Gods Law it be lawful for the Magiſtrate to require an Oath of the Party, (that is, the party guilty or Defendant?) and in what caſe, and how far it is lawful?

TOuching the queſtioning of parties guilty or Defendants by the Religion of an Oath, as alſo of ſuch parties taking ſuch Oath, or lawfully declining it; of late hath a Queſtion aroſe, *Whether by Gods Law it be lawful for the Magiſtrate to require an oath of the party* (that is, the party guilty or defendant) *and in what caſe, and how far it is lawful?* This queſtion, to prevent any confuſion upon your memory or my own, I will divide into five branches; and indeed in this ſhort two dayes ſpace I have not bethought my ſelf of a more diſtinct method.

1. Whether it be lawful to exact or require an oath?
2. Whether it be lawful for the Magiſtrate to do it?
3. Whether from the guilty (or defendant) party?
4. Whether it be lawful in every cauſe, or not in capital cauſes, but ſuch as receive a milder puniſhment?

5. How far this is lawful, and in what cases?

Of which questions the first three have nothing of question in them, if we be found in Divinity; therefore I shall in few words dispatch them.

And first of all, it is a sacred right that such an oath may be lawfully required: In which matter I think it is very behooveful (as Christ did in the case of Divorcement) first of all to enquire what every thing was in the beginning: in the revolution of time many things are changed, the beginning is the most certain rule. Therefore I aske where and when the first mention of an oath is made in Scriptures? I finde *Gen.* 24. *Abraham* forcing his servant to take an oath, in these words, and with this ceremony; *Put thy hand under my Thigh, and I will make thee swear, that thou shalt take a wife for my son, of my Kindred.* So the first oath mentioned in Scripture, is here expressed: and as it is the most ancient and first, so it is the most frequent and onely mention almost of such a thing. This very term (to *Swear*) you will scarce any where find it in the Old Testament, but either under the word *Hiphil*, that is the Imperative, commanding conjugation, in respect of him that gives the oath: or under the word *Niphal*, that is the passive suffering conjugation, in respect of him that takes the oath. And under the same rule are the *Greeks*, amongst whom *Orcos* is the name of the oath, which almost solely the holy Ghost acknowledges in the New Testament. In that word is a kind of straitning necessity, and as they say, an exigengy no less then there is in the word *Orcos*; for from the same word comes both, that is of *straining*. Thereupon comes that common Proverb, *War and Oaths are voluntary evils*; and that they may be good, they ought to be *pressed and expressed* (as St. *Augustine* of Oaths sayes wittily) *either by the Authority of him that gives the oath, or at leastwise by the hardness of his heart that believes not.* So that it is a sin either to swear or to make war, except it be at least in some manner exacted, and upon some and no light cause. Therefore that it may be required, or rather that it ought to be, the very force of Nature, the very force of the term it self evinceth it.

But

But whether from the Magiſtrate? (this is the ſecond branch.) Yes ſurely from the Magiſtrate.

So the Divines of old; *Not onely every body but every ſoul is to be ſubject to the Powers, Rom.*13.1. Therefore the Powers have power to commit the body to cuſtody, by impriſoning it, leſt it eſcape: And ſo likewiſe the ſoul, to commit that to cuſtody, by laying an oath upon it, leſt it ſhould have any ſubterfuge, by which name God himſelf hath moſt fitly called an Oath, the *Bond or priſon of the ſoul, Num.*30.13. by which the ſoul may as it were be tyed up; and being ſo tyed up, may be bound to anſwer appoſitely and readily. But yet it comes nearer: If it be lawful for the Maſter to force his ſervant to take an oath, as *Gen.*24.3. *Abraham* did; if a father to his ſon, as *Jacob* to *Joſeph*, *Gen.*47.29. if a brother to a brother, as the ſame *Jacob* to *Eſau*, *Gen.*25.33. By how much better right is it lawful for the Magiſtrate to do it to his Subject, whoſe command is more excellent then any other command? I adde alſo about the right ſettling in marriage of a ſon, if that be lawful, as *Abraham* to his ſervant; of chuſing a fitting place of burial, as to *Joſeph*; of paſſing away the right of Birth-right, as *Eſau*; and in private cauſes, I adde alſo of the leaſt concernment, if compared with the publick: Then ſurely by better right may the Magiſtrate do it, in the common cauſe of the Commonwealth, whoſe Intereſt is greater then any other Intereſt. And that is provided for by Gods Law, *Exod.*12.8. in expreſs terms; in the caſe of a Pawn, ſaith God, *let them come before the Magiſtrate*: In which place the Magiſtrates are named by the name of God himſelf, and not by any name, but by that very name which is taken from the force of an oath: as though he ſhould ſay, Let them come before the Oath-givers, or thoſe who (when they give the Law in Gods ſtead) in his Judgment and in his Name may require his Oath to be taken: That is, Gods Deputies, *Pſal.*82.6. in Gods judgment: 2 *Chro.*19.8. the Oath of God: *Eccles.*8.2. therefore to the Magiſtrate. It is lawful to the Magiſtrate, I ſay, as well Eccleſiaſtical as Civil. Before him that is the Eccleſiaſtical Judge by Law, the Woman is commanded to purge her ſelf in a caſe of ſuſpicion of

breach

breach of Wedlock bond, *Num.*5.19. Before him that is the Temporal Judge by Law, the man is commanded to purge himſelf in a cauſe of ſuſpicion of breach of Social promiſe or Contract, *Exod.*22.8. The practice whereof we ſee (and the *practice of the Saints is the Interpreter of the Commandments*) of the Eccleſiaſtical Judge in *Ezra*, who required an oath in a Matrimonial cauſe, *Ezra* 10.5. Of the Temporal Judge in *Nehemiah*, who forced an Oath in a cauſe of Uſury, *Neh.*5.12. Neither hath the pious and religious Magiſtrate onely right to do this, but the Heathen Magiſtrate too, and that to Gods people; *Zedekiah* gave his Oath of Allegeance to *Nebuchadnezzar*, 2 *Chron.*36.9. though forced he gave it, and rightly too, if we believe *Ezekiel*; and afterwards by a ſacrilegious boldneſs he attempted to break it, he ſcaped not unpuniſhed for it, *Ezek.*17.13. Laſtly, I adde that this was not lawful to do to their own people onely, but alſo to gueſts and ſtrangers, living within thrir Territories, either for trafficking or any other cauſe: In which regard *Joſeph*, now become Vice-Roy of *Ægypt*, impoſes an Oath upon his Brethren in a caſe of Treaſon ſuſpected, though both by Law and by Nature they were *Canaanites*, *Gen.*43.3. therefore hence it now appears, that it is lawful to impoſe an Oath, and that it is lawful alſo to the Magiſtrate.

But whether is it lawful to do it to the party, that is, the party guilty or defendant? (the third thing I propounded.) Nor can that be called into queſtion, *Exod.*22.8. He to whom the Pawn was concredited is the party guilty or defendant, *Num.*5.19. The woman ſuſpected by the jealous husband to have wronged his bed, is alſo the party guilty or defendant: but to each of them is this oath to be given, nor is it lawful for them to decline it. In a few words I will ſumme it up: Whether one deceitfully keeps his neighbours goods, or perfidiouſly deteins his friends goods, or reſtores not to the owner his found goods, when he requires them, *Levit.*6.3. or (as it ſeems to me) in any other crime, (for it is mentioned indefinitely, 1 *Kings* 8.31. in *whatſoever he ſhall ſin*) it is lawful for the Plaintiff or Agent to *impoſe an oath upon the party*, that is the guilty or defendant, or *to lay an oath upon him*, as

it

it is in the *Hebrew* phraſe; nor is it lawful for the guilty or defendant party to refuſe it, whether it be impoſed by the Agent or Plaintiff, or by the Magiſtrate. Indeed I cannot deny, but we are fallen into ſuch times, that it may be expedient to impoſe the oath upon the party, Agent or Plaintiff, and not onely upon the Defendant; for it may happen that they may both prevaricate, that is, the party Agent or Plaintiff by calumniating, and the party guilty or defendant by Tergiverſation. But if we would take the Law from Heaven, from the holy Writ, to the party guilty or defendant, 'tis more neceſſary to be given. Examples are thereof: Scarce will you find in the Law an oath laid upon the Agent or Plaintiff, but very often may you find it upon the party guilty or defendant: *Moſes* renders the reaſon of it; The actor (who for the moſt part is the party endamaged) he is inflamed with anger, he is wholly wrapt up in the Leaven of anger and revenge, ſtruck through with the ſting of malevolence, *will be raſh with his mouth*, which the Wiſeman forbids to be in an oath, *Eccl.*5.1. therefore the matter of an Oath herein is altogether unfit. But the party guilty or defendant, whom the Law alwayes ſuppoſes to be guilty of the crime charged, till the contrary appear, is much fitter: In him there is leſs prejudice, leſs of affections, beſides perhaps of fear, which is as it were the heart of an oath. Therefore it is lawful to lay it upon the party guilty or defendant, and fitting too to do ſo.

Now I come to the fourth branch; In what cauſe this is fitting: which is more intricate, and hath more queſtion in it. And I ſhall not ſeek any where elſe for the diviſion of theſe cauſes, but in our Law, that is, the Law of *Divines*: there in the holy Law ſome are called wrongs or prevarications, *Exod.*22.9. ſome capital cauſes, *Deut.*21.21. whereof ſome of thoſe being heinous, are puniſhed with loſs of life, life either by being deprived of natural life, or civil, that is, Baniſhment, or (as the holy Writ ſpeaks) *rooting out*, *Ezra* 7. 26. To which are allied *cauſes of blond*, ſuch as are *Deut.*25.12. Lopping off a limb; and there in the ſecond Verſe, inflicting of ſtripes: but theſe others were not ſo great, and were

partly

partly puniſhed by pecuniary Mulcts, partly by impriſonment, *Eſth.* 7. 26.

Was there any place for ſuch an oath to be given, in ſuch crimes as were puniſhed by loſs of life? truly I do not perſwade to that. Firſt, the practice in Scripture contraries it; for I ſee when *Achans* life was in queſtion, *Joſhua* dealt thus, *Tell me, my ſon, ſwear not to me.* So likewiſe *Saul* in the like caſe concerning *Jonathan*, *Tell me Jonathan*, do not ſwear to me: a willing, not expreſs confeſſion; a ſimple interrogation, not under the bond of an oath. But (which is the hinge of the queſtion) I ſee the Prophet *Jeremy* himſelf interrogated by the King himſelf, *I will aske thee a thing, hide nothing from me:* The Prophet covenants with him, *If I declare it unto thee, wilt thou not ſurely put me to death?* (nor did *Jeremy* thus covenant without the dictate of the holy Ghoſt:) as if in ſuch cauſes God had given an immunity of anſwering, *Jer.* 38. 14. And indeed Reaſon perſwades the ſame; for indeed ſo ought Inquiſition (as far as it may be) to be made by the Magiſtrate, that the manifeſt loſs of ſouls may be avoided. When as from the mouth of the greateſt Liar that moſt true ſentence proceeded, *Skin after skin, and all that a man hath will he give for his life, Job* 2. 4. it is to be feared that that, *whatſoever, or all that a man hath*, will comprehend as well the conſcience of an oath, as the fear of God, and what elſe ſoever comes under the notion of Religion, as men are, and as they are diſpoſed. Wherefore, though I define nothing (I know not how) in ſuch cauſes as theſe, in regard of the preſent danger of Perjury: yet I think 'tis beſt to forbear the impoſing of an Oath. And the Laws which we uſe (at leaſt according to leave or permiſſion) judge the ſame. But in other caſes, being of leſſer offenſe, and ſo puniſhed more eaſily, I think otherwiſe: Except perhaps we take that ſentence out of the Comick Poet, and place it in Divinity; *An Oath is for the keeping of a thing, not for the loſing of it:* For by that general Law it is provided, *Lev.* 5. 4. —*If a ſoul ſwear, pronouncing with his lips, to do evil or to do good, whatſoever it is that a man ſhall pronounce with an oath, and it be hid from him when he knoweth of it, then he ſhall be guilty in one of theſe.* And whereas this cannot be under-

underſtood of the *Evil of guilt or of a crime* (as we ſpeak in the Schools) *leſt an Oath, which is a bond of piety, ſhould become a bond of Iniquity:* it follows, it muſt hold in an *evil of puniſhment*; in which kind it is neither lawful to refuſe an oath, nor after it is taken to break it.

1. *Not to refuſe it.* *Solomon* wittingly and prudently laid an oath upon *Shimei*, to the loſs of his liberty, *that he ſhould not go beyond Cedron*; and he lawfully laid this oath on him: and when afterwards *Shimei* (having ſworn not to paſs theſe bounds) yet did it, he loſt his life for it, and juſtly, not onely for paſſing beyond *Cedron*, but for the violation of his oath, 1 *Kings* 2.43. What would you have? even prophane *Shimei* refuſes not an oath, though to the loſs of his liberty. Nor *Micheas*, who by the King was bound up under the Religion of an oath, (neither was that once onely, or that the firſt time, but it had been done ſometimes before) when he was free, refuſed; but being ſworn, refuſed not, but anſwered: though his certain puniſhment was before his eyes, though for his anſwer he was to be ſent to priſon, 1 *Kings* 22.16. By which example it appears, as well that it was then the cuſtom in *Iſrael* to take an oath to anſwer, as alſo that the Prophet *Micheas* durſt not (perhaps he was ignorant of Gods Law in that point) do as we do now-a-dayes, either covenant that the oath ſhall not entangle us, or endanger our liberty; or if that may not be granted, then to uſe Tergiverſation.

2. *Not to break the oath.* That is, (as the principal argument) if it may lawfully be performed: for except it be ſo, rightly ſaith St. *Auguſtine*, *Juſtice breaks unjuſt bonds.* I hope the Magiſtrate ſhall not have leſs power then every one of the vulgar, and every private perſon: every of them have at leaſt that ſmall power. If he be ſworn to his loſs, yet he muſt not change in that he hath promiſed to his neighbour, *Pſal.* 15.4. and if not his promiſe to his neighbour, then not to the Magiſtrate, by a better right ſure, or equal at leaſt. What then? even prophane *Eſau* revoked not his oath, though it was to the loſs of his Inheritance. But that private men, once for all, may know under what Law they are in this caſe, it is not lawful, no not for a King, to do it: *Zedekiah* took an oath to his loſs,

and as at the firſt view it ſeems, even as well to his own ſlavery, as the ſlavery of his people, *Ezek.*17.13. he changed: but God both deteſted and revenged that fact of his. Nor is it lawful for a Commonwealth ſo to change: The Commonwealth of *Iſrael* made a League with the *Gibeonites*, and ſwore to it, and this was contrary both to their profit and the publique command of God: *Joſhua* (*Joſh.*9.15.) thought not fit to have it chang'd, and he thought right: The ſame oath *Saul* afterwards preſumed to change, though he did it in zeal towards *Iſrael*, yet that was expiated, firſt, by the danger of the loſs of his Kingdom, and afterwards by the cutting off his poſterity, 2 *Sam.* 21. 2. Therefore this is not lawful for a King, a Commonwealth, nor a private man to do. Now I conclude: So be it there be not danger of loſs of life in it, in matters and cauſes, which are puniſhed either by pecuniary Mulcts, or by impriſonment, it is lawful for the Subject to undergo that oath, and for the Magiſtrate to require it. But in this point is much doubting; this Oath, how far it is lawful, and in what manner and caſe? Which whileſt I treat of, all my action is (as they call it) the purſuing of the Judicial proceedings, by which it may be known at length, in which way we may go where we may go no further: and hereof I ſee three parts, (as far as concerns our purpoſe) which are thus deſigned in holy Writ, 1. The admiſſion of the ſuit or complaint, as the *Hebrews* call it; that is, the entrance of the cauſe into judgment, out of *Iſaiah* 1.23. St. *Paul* calls it *receiving an accuſation*, 1 *Tim.*5.19. The ſecond is the ſtate and poſition of the cauſe, that is, *the foundation of the ſuit or complaint*, as the *Hebrews* give it the name out of *Deut.*19.13. The *Greeks* call it, *the matter to be judged and determined.* St. *Paul* (if I be not deceived) ſayes it is *an end of ſtrife*, *Heb.*6.16. The third is, *Inquiſition upon the proofs*, that is, as the *Jews* call it a Perveſtigation or ſifting of the ſuit or complaint, out of *Iob* 29. 16. the *Greeks* call it a Structure of the cauſe. St. *Paul* calls it a *confirmation*, *Heb.*6.16. (for with the fourth, which all men call the Sentence, I have nothing to do.) Therefore theſe three things are to be in all Judiciary proceedings, *That the party ought to be lawfully queſtioned*; after that, *the ſtate of the cauſe*;

cauſe; then, *the proofs are to be looked into.* And in the firſt part there is no uſe of an oath, that I know or have read of: yet that I ſhould enquire hereof, ſome mens error makes me do it, which error I ſhall leſſen this day, (if it may be done) who think themſelves not ſufficiently accuſed, nay they think they ſhall accuſe themſelves, except an accuſer ſtep forth and ſhew himſelf; and who falſly and raſhly ſuppoſe, and yet they ſuppoſe it, that that oath which is required of them for the ſtating of the cauſe, that is the ſecond part, that is to be required to the firſt part, this is the admiſſion of the ſuit or complaint.

So I propoſe it thus: In every ſuit or complaint the matter either is ſo apparent, as that it is manifeſt as well concerning the fact as the perſon: whether the perſon be deprehended in the deed doing, that is, (as they ſay) taken in the manner, as ſhe was, *Iohn* 8.4. Or ſo with an high hand, or (as we uſe to ſay) with a notorious boldneſs, as attempted before the Magiſtrate and all the Congreation, as was *Zimri's* wickedneſs, *Numb.*25.8. In which caſes ſo openly acted there was no need of accuſer or witneſs: or if it be ſo, that the fact is manifeſt, but the perſon is unknown; as in the dead body found, but the murtherer is not known, *Deut.* 21.1. or the perſon is known, but the fact unknown, as in *Achans* caſe, *Joſh.*7.18. In which matter ſo controverted, a man may, by the judgment of the Divine Law, be called into queſtion four manner of wayes.

For either one may be brought forth upon ſome ſigns or preſumptions, as in that firſt piece of Gods juſtice, (which all humane juſtice imitates) it was done againſt *Adam*, without an accuſer, onely upon ſigns and preſumptions, that is, that he fled, and hid himſelf amongſt the Trees, (a ſign of a guilty mind) *Gen.*3.8. In the ſecond piece of juſtice againſt *Cain*, that likewiſe was upon ſigns and preſumptions, (that is, *Abel* appearing no where) effuſion of bloud being found, *Cains* anger or envy towards *Abel* foregoing it, *Gen.*4.6,10. This is the firſt manner.

The ſecond is, Or one may be brought forth upon the impeachment of another, as in that very firſt piece of juſtice;

Adam onely was cited, but he being queſtioned (as uſually it happens) impeaches *Eve*, ſhe likewiſe the Serpent, *Gen.*3. 12. and ſo they two hereby were made parties guilty or defendant.

The third is, by Fame, or rather Infamy, as for the moſt part ſuſpicion follows in the neck of the facts of wicked men, talk or fame follows the ſuſpicion, and inſinuation or complaint follows the talk or ſame: And thus was the courſe againſt the *Sodomites*, *Gen.*18.20. *The cry of the Sodomites is great, I will go down now and ſee, &c.* ſaith the Lord. And after the ſame manner were Inquiſitions made both in the Law, *If it be told thee, and thou haſt heard it, Deut.*17.4 and in the Goſpel againſt the inceſtuous perſon, 1 *Cor.*5.1. *It is reported.*

The fourth is by Suggeſtion or Complaint, as in *Iobs* caſe, *cap.*1.11. where the Accuſer of our brethren (as St. *John* calls him) would have made that holy man guilty of Hypocriſie, a falſe crime, yet a crime; and that partly *juridically*, under which name amongſt the *Hebrews* they were called *Maſters of the ſuit or controverſie*, *Iſaiah* 50.8. (we tranſlate it Adverſary.) And here the puniſhment of the offending party was ſought after, that he might give ſatisfaction to the perſon wronged; partly (as it is called) Evangelically, wherein one is denounced or reported to the Church, where onely the medicine or remedy is ſought after, that the Church may have ſatisfaction in cauſe of ſcandal: In the firſt, the thing it ſelf (as we uſe to ſay) ſpeaks and impeaches the party guilty; in the ſecond, one guilty perſon impeaches another; in the third, the ſpeech of the people is the Accuſer; in the fourth, any one under the proper and true name of an Accuſer.

To this I adde a Fifth, but not (as theſe) as an ordinary remedy to determine the controverſie; but plainly an extraordinary one, not to be put in practice but in the Valley of *Achor*, that is, againſt the troublers of *Iſrael*; (for ſo the word *Achor* ſounds) that is, in ſome heinous wickedneſs, or the ſtate of the Church and Kingdom being in danger: in ſuch caſes we run to extraordinary remedies, that is, to *Lots* as *Ioſhua* did, which in certain cauſes is not granted, *Ioſh.*7.16. In this *Ioſeph* made uſe onely of his own ſuſpicion, *Are not*

you

you Spies? (ſaith he) *to ſee the nakedneſs of the Land ye are come,* *Gen* 42 9. and when they denyed, yet without ſign or token, ſame or any Accuſer, he queſtioned them, thruſt *Simeon* into priſon, and forced the reſt to take an oath: Nor did they appeal to the Law of Nations, or complain that they were uſed contrary to Law and right. For where the peace of the Commonwealth is concerned, that is of ſuch moment, that I doubt not, that God ſuffers his ſpirit of jealouſie to come upon the Magiſtrate, touching the ſafety of his *Iſrael*, no leſs then he ſuffers the Husband to have his, touching the chaſtity of his Wife, *Num.* 5 14. For the matter in queſtion, it is in a main degree, dangerous, that it ought not to be diſſembled: and the perſons with whom 'tis acted uſe not to bring in any witneſſes, (but ſuch as are guilty themſelves) by whom they may be convinced. And as to the crime we ſpeak of, it is of that kind of wickedneſſe that leaves no prints, footſteps or marks behind it, by which they may be taken hold of: Wherefore in thoſe caſes it is no leſſe lawful to queſtion or accuſe upon ſuſpicion onely, then it is by the Pillory, Stocks, or * Boat, for ſuch purpoſe theſe things were in Gods †Commonwealth.) Either of which in other, either controverſies or crimes, no man allowes. Well does *Seneca* (if I temember well) render the reaſon hereof, *Where Villanies run riot beyond meaſure, 'tis unjuſt that juſtice ſhould be tyed to degrees:* to which that plainly extraordinary queſtion of him, who about that wicked extraordinary act of *Achan* betook himſelf to lots, is not very unlike. The God of *Iſrael* would have them to be troubled, that go about to trouble the *Iſrael* of God: and hereof the Valley of *Achor* is a perpetual monument. Now, whomſoever the Magiſtrate calls in queſtion by any one of theſe four, (or if it concern the peace of the Commonwealth, or of the Church, the fifth way either) foregoing, the partie is lawfully called. Nor is there any reaſon he ſhould fear, that he ſhould accuſe or bewray himſelf, he is now lawfully accuſed and bewrayed. He is, now that he is accuſed and bewrayed, to take care how he ſhall lawfully defend himſelf. And hitherto of the right of Accuſation.

* A puniſhment amongſt the Heathens, where the party was put into a Boat, and another Boat whelm'd over him.

† Jer 29.26.

Now I aſſume the ſecond. The matter being thus before the

the Judge brought into doubt, the party guilty or defendant, either confeſſes the crime committed, as *Achan* did, and then the Judge hath no more to do but to pronounce ſentence; or (which is moſt commonly done) denies it: which *Solomon* moſt elegantly expreſſes, *Prov.*18.17. *He that is firſt in his own cauſe ſeemeth juſt, but his neighbour cometh and ſearcheth him.* Now the party guilty or defendant denying, by repelling the objection, and the Agent or Plaintiff affirming his intention: thereon ariſes that contradiction St. *Paul* ſpeaks of, *Heb.*6.16. the bounder or end of which contradiction is, that which in every Judicature is ſought for, as there the Apoſtle obſerves; but no bounder will be found, till the matter be put in an equal ballance, except the one party have a better *confirmation* then the other; 'tis the Apoſtles word in the ſame place, therefore 'tis the Judges part to enquire on which part that lyes. 'Tis but a light labour and little praiſe to end ſuch contentions, as are eaſie and plain; but that's the worth of a Judge, to ſift out ſuch cauſes, where the right is obſcure and perplexed: *The cauſe which I knew not, I ſearched out*, ſaith *Iob* of himſelf, *Iob* 29.16. And to do that dexterouſly and fitly is the honour of a Magiſtrate, ſaith *Solomon*, *Prov.*25.1. to whom himſelf, that ſentence he pronounced, in that moſt difficult cauſe 'twixt the two Harlots, touching the uncertain mother of the ſurviving child, was an high honour, 1 *Kings* 3.27. But before theſe *confirmations*, that is, the foundations of the cauſe, ought to be or can be ſet forth, it is neceſſary ſome ſtate of the cauſe muſt be ſettled; or as it were a hinge muſt be, on which the cauſe may be turned, and that firſt of all to be made manifeſt, what and how far he affirms and the other denies, wherein each of the Litigants may rightly call the other, to ſet foot to foot and hand to hand. Sayes the *Iew*, and prudently does he ſay it, *Firſt of all place me the controverſie upon his foundation*; which except you do, (as very aptly ſome ſpeak out of *Prov.*21.) the whole Action is but meer vanity, toſſed on this ſide and that ſide, this way and that way, 'twixt the Agent and Defendant: which as we cannot endure here in the Schools, much leſſe ought it to be ſuffered in Judicature, whoſe proceeding thoroughout, ought to be ſolemn and

ſacred,

ſacred, and the very Juſtice of Juſtice, as it is, *Deut.16.20.*

This ſubject matter to be judged, or ſtate of the cauſe, or (if any would rather call it ſo) the bounder of the controverſie, is to be ſought out, either in the behalf of the guilty or defendant party, or of the Agent: Not of the Agent, oftentimes he cannot, becauſe oftentimes there is none ſuch, when one is called into queſtion upon preſumption, or elſe upon fame; and when there is, he is almoſt rapt and tranſpoſed, or is driven on, either out of hatred or ſome other oblique deſire, that he himſelf is unſtated; ſo that from him in vain is the ſtate of the cauſe required: Wherefore to the party guilty or defendant is this favour granted, or rather this honor is given, (who is alwayes a perſon certain, and whom the Law accounts not convicted for guiltleſſe) that he ſhould either by affirming or denying fix to himſelf the ſtate of the cauſe; yea, that by his anſwer onely the ſtate of the whole controverſie may be ſetled, and not onely the ſtate of the controverſie, but (except he be convinced of falſhood by the teſtimony of two witneſſes beyond all exception) an end too of the controverſie. But that he may not, if he be looſe and free, depart from that ſtate ſo by him fixed, and afterwards not ſtand to that ſtate, but ſhall recoil and go back from his purpoſe; a *bond*, a *bond of the ſoul* (as God gave it the name) he is to enter into, that is, a religious affirmation, by which his ſoul is as it were bound up with a chain, to ſpeak out the truth holily and ſincerely, that is, the truth (not that abſolutely, but) as he knows it or believes it; nor muſt go contrary to his conſcience, which we call lying, but even as he were acting with God himſelf, ſo muſt he act with the Magiſtrate, that is Gods Lieutenant, that repreſents him, and requires right.

That *Iſrael* and the people of God proceeded thus, (that is, ſwore to make true anſwer) that practice of *Michaas* (of which I made mention above) and that, which is much apter, that other in that queſtioning of *Elias*, 1 *Kings* 18.10. evince it; where, when they had expreſly anſwered, *He is not with us*, the King not herewith contented, forced them to an oath, that they had not found him: as if no Law could compell a man, to reſt on the anſwer of a man unſworn. Wherefore as

it

it is altogether fit, that the party guilty or defendant ſhould be bound up, leſt he might evade or change the ſtate of the cauſe, and thereupon one ſtate, and then another follows, and indeed ſo there will be no place of conſiſtency or ſettling the cauſe: So he ought to be bound up, not with his bare naked anſwer, or (as others would have it) with a pecuniary Mulct, (theſe are not bonds of the ſoul, which is the Interpreter of Truth) but with that alone, true and onely bond of the ſoul, that is, by an *Oath*. And thus at length the whole hinge of the cauſe being fixed as it ought to be, let us proceed to thoſe Confirmations, as St. *Paul* calls them.

Neither is it fitting (as I hear ſome complain) that the guilty or defendant party ſhould be ſo bound up, and the Agent altogether free. Nor is our Law ſo: but as it is not ſafe for the party agent to be ſworn, for the reaſons that I
Apoc. 12. 10. have twice named, (and God himſelf ſuffers Satan, whom he knows to be a Calumniator, to be alſo an Accuſer) yet the accuſation is ſo to be put into ſuit or action, and the accuſer is ſo by contract to give ſecurity, under the penalty of a certain pecuniary Mulct, or of a certain note of Infamy, under the
Exod. 21. 19. price of the *loſs of his time*, (as the Law ſpeaks) except he proſecute and prove the ſuggeſtion and accuſation he hath given in: So it is provided for on both ſides; on the one ſide by the Religion of an Oath, on the other ſide by a double Mulct, and no ſimple Infamy; ſo that the Agent cannot calumniate, nor the party guilty or defendant cannot fly back. Now that firſt of all the guilty or defendant party ſhould be ſworn, and then anſwer, (which ſome cannot away withall) it is juſt and lawful; for if he ſhonld do it unſworn, he ſhould do it but in a trifling manner, (that is, being free from the Religion of an Oath) if any clauſe in the action ſhould more cloſely preſſe him, he ſhould refuſe to anſwer, ſhould turn himſelf to and fro, ſeek ſhifts, diverſions and cautels, ſhould anſwer nothing explicitely and home; that which in conſcience of Religiou he is tyed to do, after he has bound himſelf by oath to do all things holily and clearly, that he had rather be guilty of doing an injury then of Perjury, and would rather ſubject himſelf to loſſe then damnation.

Shall

Shall we take a form hereof from the Law and the holy Writ? none ſeems to me fitter for that purpoſe, then that queſtioning of *Ezra*, in the 9. and 10. Chapters of *Ezra*, where the parties guilty or defendant anſwer, but firſt were ſworn: The order and courſe of which judicial proceeding was this; ſome of the principal perſons come, and relate the matter to *Ezra*, of Marriages contracted by many (ſuppoſe an hundred and ten) with ſtrangers, *chap.* 9. 1. *Ezra* forces thoſe guilty or defendant parties, even many of them not guilty or complained of, to take an oath, *chap.* 10. 5. he forces them too in a cauſe, in which they might be convinced by witneſſes: but firſt he forces them. After that, as in the 5. *chap.* 16. *verſe*, *Eſdras* with the reſt, to whom the care of that cauſe was delegated, ſit upon the cauſe, which the third Moneth after they bring to effect. Which form being uſed by *Ezra*, a ready Scribe, and skilful in the Law of his God, it may anſwer the deſires of any man not unjuſt, as to the practice of the Law, (as they ſpeak) and the knowledge of the rules thereof. And this is the former uſe of an oath, juſt and lawful, in the ſettling of the foundation of a ſuit or controverſie.

The other is, when arguments are uſed to make good the ſuit or controverſie begun. Now the arguments, or theſe Confirmations, to which the Judge gives credit, are partly marks and preſumptions, (ſuch as the nature of the cauſe bears) certain and undoubted, partly in corrupt and found teſtimonies.

Preſumptions or *marks*, ſuch as are brought forth by the Parents in the caſe of the ſlandered Virgin, *Deut.* 22. 17. *Teſtimonies*, upon whoſe credit the whole action is confirmed, *Deut.* 19. 15. In the number of which (I ſay of Teſtimonies) I place an Oath, and that *bounder of controverſie*, or (as they ſpeak) that *deciſory oath of controverſie*, *Heb.* 6. 16. The *Hebrews* out of the old Canon make two parts, or rather, if you will, two kinds of an Oath.

The former is a ſolemn conteſtation, wherein any call God to witneſſe for want of other witneſſes, who either cannot or will not bear witneſſe, even God they call to witneſſe, who is preſent every where and in all actions, and hath the right

of a witneſſe: *The Lord Jehova lives, before whom I ſpeak*; this is a form of conteſtation, *Judges* 8.19. The later I may call it an Execration, wherein a man gives oath to his conteſtation (or joyning iſſue in the cauſe, as 'tis called) pawning as it were his ſalvation, and renouncing all the hope and help he hath from God, if he bear witneſſe falſly: *So do the Lord to me, and ſo let him adde*; there is a form of Execration, 1 *Sam.* 14.44. Neither have Divines thought it of leſſe concernment, or that the guilty or defendant party was leſſe bound, whether he uſed either of thoſe forms, or both. I adde alſo, whether the Magiſtrate conteſt the guilty or defendant party, or by adjuration he be execrated, or he do it to himſelf by taking an oath; for 'tis all one whether this or that be done: whether an oath be laid upon the guilty or defendant party by the Judge, or he lay it upon himſelf. And that they take for granted, as well by *Prov.* 29.24. in regard of the poſition, as by *Judges* 17.2. by reaſon of the condition. But this controverſie brings another: I proſecute not that, I proſecute that I begun, touching Arguments.

Now God hath given power to the Judge to enquire of the Arguments touching the crime, and of citing the Teſtimonies; as alſo to the giving of oaths, and that for the collecting the *confirmations* of the cauſe. That power is mentioned *Deut.* 13.14. *Thou ſhalt enquire* (ſaith the Lord) and that in general; whereof he ſubjoynes two kinds, the firſt, *Thou ſhalt ſearch*, that is, *preſumptions and arguments*. The ſecond, *Thou ſhalt aske*, that is, witneſſes and thoſe that are knowing of the paſſages concerning that cauſe.

The Arguments. So it was lawful for *Joſeph* to ſearch his Brethrens ſacks, that he might find the Cup taken away by theft, *Gen.* 44.5. So is it lawful for our Magiſtrates to ſearch the hidden corners and ſecreteſt rooms of the houſe, ſo to find out marks or preſumptions of ſuſpected crimes.

Teſtimonies. So it is provided by Gods Law, *Lev.* 5.1. *If a ſoul hear the voice of ſwearing* (the Chaldee Paraphraſt, a moſt ancient Interpreter of the Law, hath added to it, * nor where we have erred; nor is it to be doubted but that it was according to the ſenſe of the ancient Church, even before Chriſts

* Here ſeems to be ſome miſtake in the printed Latine.

Chriſts time) *made or given by the Judge, and he can be a witneſs of that matter, as one that ſaw it and knew it,* (in which place the Septuagint turns the word *knew it*, into *being conſcious* of it) *if he that is ſo conſcious of it, ſhall be called forth to give his teſtimony; if he reveal it not, he ſhall bear his own iniquity.* Therefore 'tis lawful to make inquiſition, and upon oath.

And firſt of all 'tis lawful to make Inquiſition touching the party guilty or defendant, even amongſt others, though his Brethren, though they be religious perſons; as *Obadiah* touching *Elias*, 1 *Kings* 18.10. *There is no Nation or Kingdom whither my Lord hath not ſent to ſeek thee, and when they ſaid, He is not there, he took an oath of the Kingdom and Nation, that they found thee not.* And methinks 'tis likely, when this Oath was common to the whole Kingdom, it fell alſo upon thoſe religious men, whoſe Knees were not bowed to *Baal*, nor had their lips kiſſed him, neither did they in this cauſe (though it was to the prejudice of their *Elias*, and that too before wicked Magiſtrates) refuſe to give their teſtimony. Neither is it onely lawful to enquire concerning the guilty or defendant party, amongſt others onely; but alſo to enquire of him himſelf, concerning himſelf. The great Judge gave us a precedent herein, in that firſt Inquiſition that ever was, *Gen.* 3.11. *Who told thee that thou waſt naked? haſt thou eaten of the tree, whereof I commanded thee that thou ſhouldſt not eat?* So the Princes interrogated *Baruch* touching *Jeremiahs* book, *Tell us, how didſt thou write all theſe words at his mouth?* So *Eſdras* the very parties guilty or defendants touching their own fact, *Eſr.*10.11. So the High Prieſt committed St. *Paul* to cuſtody, *to enquire ſomething of him more perfectly*, *Acts* 23.20. For oftentimes Accuſers fall back, (which the Heathen man long ſince obſerved:) All cannot, ſome will not accuſe; what's to be done then? Some mens wickedneſſe, becauſe they are truly the works of darkneſſe, nor can be brought to light, *Epheſ.*5.11. becauſe *they joyn hand in hand*, nor will diſcover themſelves, *Prov.*16.5. Becauſe the name of *Doeg* is harſh, and even the very thing, *to go forth to accuſe*, is now become poor and odious, a matter of coſt, danger and infamy, *Prov.* 25.8. And ſhall we ſuffer wickedneſſe to lye hid and ſpred

abroad, and by delay to gather ſtrength, till at length it break out to the ruine of the Commonwealth? and becauſe no man can or will (for it is all one, whether he will not or cannot accuſe) is't not lawful to enquire? ſurely 'tis lawful. But 'tis in vain to enquire without the bond of an Oath. The Holy Ghoſt in the old Teſtament expreſſes it by the word *adjure*, and ſo the King adjured *Micheas*. In the New Teſtament alſo by the word *adjure*, ſo the High Prieſt adjured our Saviour, *Mat.*26.63. and they both made Religion of not anſwering to the Queſtion. Touching the *Hebrew* word there is no queſtion, but that both by the force of the name, and the uſe of it, it imports an Oath. I adde, nor is there of the *Greek* word neither, if *Beza* and the reſt of the Tranſlators, render right that requeſt of the Devil, which is in *Mat.*5.7. *I adjure thee that thou torment me not*: that is, aſſure me by giving me an Oath or ſwearing to me, that thou wilt not torment me. So ſeems it to them: but that term of Adjuring I paſſe by. I take the other (if it be another) of *laying an Oath* upon the party guilty or defendant; that is, that by Law it is permitted to the party agent to force him againſt his will to take an oath, *Exod.*22.8. 1 *Kings* 8.31. and therefore 'tis more then permitted to the Magiſtrate. Surely very bad were the caſe of our affairs, if every private man ſhould have power to require an oath of the party guilty or defendant, and the Magiſtrate ſhould not have power: if in the caſe of a Pawn it ſhould be lawful, and not of a Kingdom: if one may be forced to ſwear, that he hath not *put his hand to his neighbours goods*, and cannot be forced to his oath, that he hath not put forth his hand to the peace of the Commonwealth. If, as to the Law, his caſe be better that makes troubles in the Church of God, then his that has done it about his friends money. Compare theſe one with another: Firſt, the Magiſtrate, then the party agent, one perhaps of the meaneſt of the common people; then the caſe of a mans ſmall ſumme of money, and the caſe of the Commonwealth further; that Pawn ſometimes may ſomewhere be diſcovered, but thoſe clandeſtine conſpiracies cannot (unleſs you grant ſuch Inquiſition) for that's vaniſhed into the air, left no impreſſion

preſſion behind it. Either I am very much miſtaken, or (whether you conſider the perſons or the matter, or the moments, or the events of the things) the equity and neceſſity of an oath is here greater. Therefore that the party guilty or defendant ſhould be ſo interrogated in his own cauſe, 'tis allowed by Gods Law: and that alſo by the laying on an oath is lawful. And this laſt uſe of an oath is juſt and lawful, not onely that the ſtate of the queſtion may be ſettled by the anſwer of the party guilty or defendant, (as before is laid down) but alſo that the confirmations of the cauſe, that is, the pillars of the proofs may be gathered together, whereupon the Judge may relye to determine the ſuit on one ſide.

This may ſuffice for this purpoſe, unleſs that, as I believe, there reſt one knot or another, not worthy the looſing: but that (as the world goes now-a-adayes) every ſcruple that men make, becomes a rock; they complain, that by theſe means men are compelled to *an infinite oath*, except before hand they may have the Queſtion, and afterwards take the Oath. The reaſon hereof I have given before, and therefore will not here repeat it: This onely I maintain, that the uſual oath given cannot be declined by reaſon of Infinity. For whileſt thoſe bounds, and as it were ends of an oath, the Prophet *Jeremiah* ſpeaks of, *Jer.*4.2. (which alwayes in Divinity were accounted the bounds, and as it were the ends of an oath) *in truth, juſtice and judgment:* whileſt theſe were obſerved there was caution enough had: nor other ends doth the Scripture acknowledge or require.

1. *In Truth:* that is, truly. That no man be compelled to ſwear contrary to that he knows; as it was charged upon *Micheas*, 1 *Kings* 12.16. *Tell me nothing but truth in the name of the Lord.* Or if any man like better that Atteſtation of St. *Paul*, *Rom.*9.1. *I ſay the truth in Chriſt, I lye not, my conſcience alſo bearing me witneſs in the holy Ghoſt.* This is enough for the firſt part.

2. *In Juſtice:* that is, juſtly. That nothing be ſworn but what is poſſible: in which caſe *Abrahams* ſervant took care, *Gen.*24.5. Perhaps *the woman will not be willing to follow me, &c.* The Heathen themſelves too had that caution, *So far as I know*

and

and am able. And alſo to the honeſty of it; wherein they in *Ezra* 10.3. made proviſion, that is, *According to the Law.* St. *Paul* alſo, *Acts* 23.3. *Commandeſt thou me to be ſmitten contrary to the Law?* This is ſufficient for the ſecond part.

3. *In Judgment:* that is, maturely not raſhly; (for ſo do the Interpreters diſtinguiſh it.) Of which, ſayes *Solomon*, *Eccl.* 5.1. whileſt thou art ſpeaking to God, *Be not raſh with thy mouth*; but taking due time to deliberate thereupon, anſwer. Theſe are the ends of an oath, which the Scripture acknowledges; nor do they require more, as it is defined, if theſe three ends be kept: 1. *I will ſpeak nothing but truth in the name of the Lord*: 2. Of ſuch things I know and as far as I am able, and according to Law: 3. Taking ſo much time to think on't, that there can be no danger from an infinity or endleſneſſe. Though every petty queſtion is not clear, (which often happens from the occaſion) 'twill be ſafe enough to contain within theſe bounds; not to anſwer any thing falſly or raſhly, nor to anſwer concerning ſuch things which he remembers not, or is not bound by Law to it: that is, he will do that, which without an oath he is bound to do. And he that deſires to be more ſafe then thus, in my judgment rather deſires to arrogate an infinite liberty, then to decline an infinite oath; or he is guilty, or ſomething elſe that I will not ſpeak of.

And now, whileſt thou art taking care how to avoid a ſin by ſwearing, I think it matters not much, whether before hand thou promiſeſt by a *promiſſory oath* to ſpeak truth, or afterwards thou ſweareſt by an *aſſertory oath*, that that which thou haſt ſpoken is true: It comes to the ſame paſſe before anſwer, by *promiſſory oath* to promiſe to deal truly, or after anſwer by an *aſſertory oath* to atteſt, that thou haſt dealt truly: I have ſaid, and I will ſay; I have done, and I will do: there are two times, but the Oath is the ſame. Wherefore as to the matter I think it matters not much, yet thus far it may, that it much conduces to the managing of ſuits at Law, both that they may be clear and explicite, as alſo readily diſpatched. That they may be clear and explicite, leſt (if the party guilty or defendant, being not tyed by the bond of an Oath, may

may ſeem to be at liberty to prevaricate) the whole controverted action may float up and down, and have neither foundation nor hinge. That they may be readily diſpatched, leſt (in caſe the party guilty having anſwered, will not ſwear to the truth of his anſwer) the Judge ſhould be compelled often to iterate the queſtions, and act the ſame thing over and over. It is alſo conſiderable too, becauſe in that form of judgment, which is moſt agreeable to Gods Law, and ſutable to this Law of ours which is called into queſtion, this order is obſerved; firſt of the *oath*, and then of the *queſtion*; and that at their requeſt concerning whom the queſtion is made. For whereas for the diſpatching of controverſies, Gods Law has made accurate proviſion; nor in Scripture is there no ſooner made mention of judgment to be given, then that it ſhould be done ſpeedily, leſt if it be long in doing it become ſour. Rightly did they require, *Ezra* 10.13. that he might not be neceſſitated upon the judgment-ſeat, to give anſwer to all queſtions: It was tedious, not the work of one day; therefore after he had in a ſolemn place given them the oath, they might come afterwards at leaſure, at times appointed, and enquiry might be made into the ſeveral circumſtances of the fact, by virtue of the oath before taken. The ſame practice is uſed now by us, and the ſame cuſtom prevails; which, whether you look upon the advice, is moſt juſt; or the Ordinance, it is moſt like the Divine Law. For if the Queſtions muſt go before the Oath, (ſo that it ſhould be unlawful for any to take an oath but in open Court) ſurely one day would ſcarce ſuffice for one cauſe, and the people (contrary to *Jethro's* advice) ſhould ſtand in judgment from morning to the evening.

Ezra 10.5.

Exod. 8.14.

That laſt is, which ſome (doubtleſs for want of underſtanding) would have the Oath ſo given them; that after they had taken the Oath, there ſhould be no farther enquiry: And this they hold, grounding themſelves upon that ſentence of St. *Paul, An Oath is the end of all ſtrife.* I ſtand not upon it that it may be ſo interpreted, that the original Greek word there *peràs*, rather is the *State* of the Controverſie then the *End* of it: But be it ſo, the end; let the Oath be the end, but

Heb. 6.16.

but not every Oath, or by whomſoever taken, or howſoever performed (this can ſcarcely be thought to proceed from a man in his right wits) but I hope it muſt be ſuch an Oath, of the credit whereof there may be no contradiction: in caſe the *Contradiction* ought to be ended by that Oath. Wherefore if the Judge muſt end the Suite or Controverſie without contradiction, it muſt be ſo clear, that no man even without Examination, or after Examination, will or can contradict it. For to deſire to free every Oath of every man from all Inquiſition, what is it but to plead for perjury? What elſe is it, but as it were upon warning given, ſo by this kind of Authority given; to ſollicite men of looſe Conſciences to commit this wickedneſſe? For whether the Actor, or Defendent, or Witneſs take it, the Oath is of the ſame Conſcience, of the ſame face, there's an end: if one will ſwear that what he ſues for, or complaines of is his, is true, preſently he carries the Cauſe: But afterwards, it muſt be unlawful to enquire whether he hath ſworn true or no, *Becauſe an Oath is the end of all Controverſie.* If this be granted, it makes well for perjured men. Let them make their peace with God as well as they can; from the Law they need fear nothing, nor ſhall be puniſhed by the eare for what they ſinned by their mouth. How juſter is that? Yea truly if the Oath be ſound, let the Inquiſition thereupon be twice, or thrice, or ſeaven times, if it be thought fit, it will alwayes as out of a furnace come forth more clear and pure, and the very Inquſition it ſelf, will become an acquiſition of more credit. But if the Oath be not of good, but doubtful credit or ſuſpected: Let it be inquired into, and let *Juſtice break unjuſt bonds.* Surely this is reaſon, and is it only reaſon? Doth not the Law ſay the ſame? Whether one contend by oath, either in his own cauſe for himſelf, or in anothers againſt another for himſelf. For himſelf: The woman of ſuſpected chaſtity, when ſhe had upon her oath denyed the adultery, laying a moſt heavy curſe upon her ſelf if ſhe were guilty; was ſhe thereupon preſently diſmiſs'd? (for an Oath is the end of all controverſie:) No, a new queſtion was made, whether ſhe had ſworn truly or no? for proof whereof ſhe was to drink the Bitter waters, which

which would be the confirmers of the Oath if true, and the revengers if falſe, *Num.*5.24.

Againſt another: When the Law had provided, that out of the mouth of two or three witneſſes, who being ſworn had given teſtimony againſt a man, the matter ſhould be eſtabliſhed, *Deut.*19.15. Leſt any man ſhould take humane teſtimonies for Divine Oracles, in the next Verſe 'tis commanded, that the ſuſpected witneſſe muſt ſtand before the Lord, the Prieſts, and it muſt be enquired into whether he hath carried himſelf ſincerely and truly in the teſtimony he hath given; but if he be convicted of falſity, then ſhall he be puniſhed as he ſhould have been whom he complained of. But I ſhall tranſgreſs upon the time, and upon the Church too, (the Clock having a while ago called us off) if I ſhould further follow theſe trifles, which whoever liſt may bray with arguments, they of their own accord ſo overflow: therefore I reſtore you to your ſelves and conclude. If (as the Prophet ſaith) this Judgment, which we uſe, be laid to the Line, and Righteouſneſſe to the Plummet of Gods Word, there ſhall be in thoſe things no ſin. For the Magiſtrate to require, and that from the party guilty or defendant, (eſpecially if the cauſe be not capital, or a cauſe of Bloud) an Oath; and that he may do it ſo far, whether it be that the controverſie may thereby be ſet upon its foundation, whileſt the ſtate of the cauſe is ſought for: or that the truth of the proofs may be made evident, whileſt the queſtion is handled. Nor does the ends of the Oath, or the order, or the examination, offend againſt Divinity, and therefore cannot be declined. They that decline it, firſt they do it out of ignorance of Gods Law: then the example is dangerous, that one may thus for his pleaſure enquire into publick judgments without judgment: if we may call into queſtion the reſt of the affairs of the Kingdom, and the moments of the Commonwealth: laſtly the Law it ſelf if it make not for us. That God Almighty may avert this from us, to whom turning our ſelves let us pray, that he will give us grace to be modeſtly wiſe and ſober in all things, to ſee in our minds how irreligious it is, how unchriſtian to decline the judgments of our Nation: but rather with all Iſa.28.17.

our endeavour, with all the ſtrength and force of our Wit to maintain them, which maintain the Commonwealth and us all; for next after God and his ſervice moſt true is that ſaying
Job 36. 17 of *Elihu, Judgment and Juſtice maintain all things.*

Upon the conſideration moſt eſpecially of what hath been written by Dr. *Coſens*, in that Apology touching the Oath *Ex officio*, and Purgation, and what is ſaid in that ſhort Manuſcript, and in the Lord Biſhop *Andrews* Determination thereupon, and of the inconveniences and hurt that probably may be feared to enſue upon the prohibiting that Oath and Purgation, together with the practice ſtill at Common Law in the like caſes, and the reſt that is here ſet forth; as it is hoped that Act may be thought fit to be reviſed and re-examined, and perhaps altered: ſo with the like humility, all that is ſaid or ſhall be ſaid in this Treatiſe, is moſt ſubmiſſly tendered to His Sacred Majeſty, the Lords Spiritual and Temporal, and the Commons in this happy Parliament now aſſembled, to be weighed by them, if ſo to their Wiſdoms it ſhall be thought fit; otherwiſe to be as unſaid and retracted, as is every thing there, if it be diſſonant to Gods Word, His Majeſties Prerogative, the Laws of Church or State, or the known Laws of the Land, or the juſt policy and government in Church or State, or againſt Chriſtian charity or brotherly love.

Should any man object, That ſome Civilians deſired that this Act, whereby the Oath *Ex officio* and Purgation is forbidden, ſhould paſſe at the end of the receſs of Parliament, the latter end of this laſt Summer, 1661. when many other Acts of great concernment were in agitation, and ſome then paſſed, and ſome ſtayed, ſuppoſed that they will be refumed and conſidered of at the next meeting of Parliament: that, I ſay, this Act ſhould not ſtay (as ſome would have had it) till that next meeting, but rather paſs now, though with theſe *Proviſo's* on it. I can ſay no more then this, that *Certa incertis præferenda*; if they could not have all they would have, yet to have ſomething, that in a manner wanted all, was but reaſonable prudence: it had perhaps ſavoured of morofity to

have

have done otherwiſe, eſpecially conſidering that thoſe that have long faſted would be glad to eat; though, I hope, theſe that adminiſtred this food to them, did not fear they would (as hungry men uſe to do) feed too faſt, to their hurt, not to their nouriſhment, and therefore did ſet the leſs meat before them; but upon a pauſe after this refreſhment there may be a ſupply: Neither need (I humbly conceive) any thing that is already done, hinder the review or alteration of this Act in that point. For it is no new thing nor diſcommendable, (but contrary) to make Laws upon preſent reaſons or emergencies, and yet upon future accidents or contingencies, and variation of the times and occaſions, and other neceſſary requiſites, which could not well be foreſeen at the making of theſe Laws, nor perhaps dreamt on till they happened; to alter, change or repeal the former. Hereof many inſtances might be given, but in ſo plain a caſe I ſhall mention but one, and that in a matter of Eccleſiaſtical cogniſance, touching Precontracts of Matrimony, in 32 *H.*8.*c.*38.

32 *H.*8.*cap.*38.

What Marriages are lawful, and what not.

WHereas heretofore the uſurped power of the Biſhop of Rome, hath alwayes entangled and troubled the mere jurisdiction and regall power of this Realm of England, and alſo unquieted much the ſubjects of the ſame, by his uſurped power in them, as by making that unlawfull which by Gods word is lawfull, both in marriages, and other things, as hereafter ſhall appear more at length, and till now of late in our Soveraign Lords time, which is otherwiſe by learning taught then his predeceſſors in times paſt long time have been, hath ſo continued the ſame, whereof yet ſome ſparks be left, which hereafter might kindle a greater fire, and ſo remaining, his power not to ſeem utterly extinct.

Therefore it is thought moſt convenient to the Kings Highneſs, his Lords ſpirituall and temporal, with the Commons of this Realm aſſembled in this preſent Parliament, that two things ſpecially for this time be with diligence provided

for, whereby many inconveniences have enſued, and many moe elſe mought enſue and follow: as where heretofore divers and many perſons, after long continuance together in Patrimony, without any allegation of either of the parties, or any other at their marriage, why the ſame matrimony ſhould not be good, juſt and lawful, and after the ſame Patrimony ſolemnized, and conſummate by carnal knowledge, and alſo ſometime fruit of children enſued of the ſame Marriage, upon pretence of a former contract made, and not conſummate by carnal copulation, (for proof whereof two witneſſes by that Law were onely required) been divorced and ſeparate, contrary to Gods Law, and ſo the true Patrimony, both ſolemnized in the face of the Church, and conſummate with bodily knowledge, and confirmed alſo with the fruit of children had betweén them, clearly fruſtrate and diſſolved: Further alſo, by reaſon of other prohibitions then Gods Law admitteth, for their lucre by that Court invented, the diſpenſations whereof they alwayes reſerved to themſelves, as in kindred or affinity betweén Couſin-germans, and ſo to the fourth and fourth degrée, carnal knowledge of any of the ſame kin or affinity before in ſuch outward degrées, which elſe were lawful, and be not prohibited by Gods Law, and all becauſe they would get money by it, and kéep a reputation of their uſurped juriſdiction, whereby not onely much diſcord betwéen lawful married perſons hath (contrary to Gods Ordinance) ariſen, much debate and ſuit at the Law, with wrongful vexation, and great damage of the innocent party hath béen procured, and many juſt marriages brought in doubt and danger of undoing, and alſo many times undone, and lawful heirs diſherited, whereof there had never elſe, but for his vain-glorious uſurpation, béen moved any ſuch queſtion, ſince fréedom in them was given by Gods Law, which ought to be moſt ſure and certain. But that notwithſtanding Marriages have béen brought into ſuch an uncertainty thereby, that no Marriage could be ſurely knit and bounden, but it ſhould lye in either of the parties power and arbiter, caſting away the fear of God, by means and compaſſes to prove a precontract, a kindred and aliance, or a carnal knowledge, to defeat the ſame, and ſo under the pretence

of

of these allegations afore rehearsed, to live all the dayes of their life in detestable Adultery, to the utter destruction of their own souls, and the provocation of the terrible wrath of God, upon the places where such abominations were used and suffered. Be it therefore enacted by the King our Soveraign Lord, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, That from the first day of the Moneth of July next coming, in the year of our Lord God, 1540. all and every such Marriages, as within this Church of England shall be contracted between lawful persons, (as by this Act we declare all persons to be lawful, that be not prohibited by Gods Law to marry) such being Marriages contracted and solemnized in the face of the Church, and consummate with bodily knowledge, or fruit of children, or child being had therein between the parties so married, shall be by authority of this present Parliament aforesaid, deemed, judged, and taken to be lawful, good, just and indissoluble, notwithstanding any Precontract or Precontracts, of Patrimony not consummate with bodily knowledge, which either of the parties so married, or both shall have made with any other person or persons, before the time of contracting that marriage, which is solemnized and consummate, or whereof such fruit is ensued or may ensue as afore, and notwithstanding any Dispensation, Prescription, Law, or other thing granted or confirmed by Act or otherwise. And that no reservation or prohibition, Gods Law except, shall trouble or impeach any marriage without the Levitical degrees. And that no person of what estate, degree or condition he or she be, shall after the said first day of the Moneth of July aforesaid, be admitted to any of the Spiritual Courts within this the Kings Realm, or any his Graces other Lands and Dominions, to any processe, plea or allegation, contrary to this foresaid Act. Rep. 1 & 2 P. & M. 8. Rep. 1 El. 1.

This Act was not many years after repealed, as followeth.

our endeavour, with all the ſtrength and force of our Wit to maintain them, which maintain the Commonwealth and us all; for next after God and his ſervice moſt true is that ſaying
Job 36. 17. of *Elihu*, *Judgment and Juſtice maintain all things.*

Upon the conſideration moſt eſpecially of what hath been written by Dr. *Coſens*, in that Apology touching the Oath *Ex officio*, and Purgation, and what is ſaid in that ſhort Manuſcript, and in the Lord Biſhop *Andrews* Determination thereupon, and of the inconveniences and hurt that probably may be feared to enſue upon the prohibiting that Oath and Purgation, together with the practice ſtill at Common Law in the like caſes, and the reſt that is here ſet forth; as it is hoped that Act may be thought fit to be reviſed and re-examined, and perhaps altered: ſo with the like humility, all that is ſaid or ſhall be ſaid in this Treatiſe, is moſt ſubmiſſly tendered to His Sacred Majeſty, the Lords Spiritual and Temporal, and the Commons in this happy Parliament now aſſembled, to be weighed by them, if ſo to their Wiſdoms it ſhall be thought fit; otherwiſe to be as unſaid and retracted, as is every thing there, if it be diſſonant to Gods Word, His Majeſties Prerogative, the Laws of Church or State, or the known Laws of the Land, or the juſt policy and government in Church or State, or againſt Chriſtian charity or brotherly love.

Should any man object, That ſome Civilians deſired that this Act, whereby the Oath *Ex officio* and Purgation is forbidden, ſhould paſſe at the end of the receſs of Parliament, the latter end of this laſt Summer, 1661. when many other Acts of great concernment were in agitation, and ſome then paſſed, and ſome ſtayed, ſuppoſed that they will be returned and conſidered of at the next meeting of Parliament: that, I ſay, this Act ſhould not ſtay (as ſome would have had it) till that next meeting, but rather paſs now, though with theſe *Proviſo's* on it. I can ſay no more then this, that *Certo incertis præferendis*; if they could not have all they would have, yet to have ſomething, that in a manner wanted all, was but reaſonable prudence: it had perhaps ſavoured of morofity to have

have done otherwiſe, eſpecially conſidering that thoſe that have long faſted would be glad to eat; though, I hope, theſe that adminiſtred this food to them, did not fear they would (as hungry men uſe to do) feed too faſt, to their hurt, not to their nouriſhment, and therefore did ſet the leſs meat before them; but upon a pauſe after this refreſhment there may be a ſupply: Neither need (I humbly conceive) any thing that is already done, hinder the review or alteration of this Act in that point. For it is no new thing nor diſcommendable, (but contrary) to make Laws upon preſent reaſons or emergencies, and yet upon future accidents or contingencies, and variation of the times and occaſions, and other neceſſary requiſites, which could not well be foreſeen at the making of theſe Laws, nor perhaps dreamt on till they happened; to alter, change or repeal the former. Hereof many inſtances might be given, but in ſo plain a caſe I ſhall mention but one, and that in a matter of Eccleſiaſtical cogniſance, touching Precontracts of Matrimony, in 32 *H.*8.*c.*38.

32 *H.*8. *cap.*38.

What Marriages are lawful, and what not.

WHereas heretofore the uſurped power of the Biſhop of Rome, hath alwayes entangled and troubled the moſt juriſdiction and regall power of this Realm of England, and alſo unquieted much the ſubjects of the ſame, by his uſurped power in them, as by making that unlawfull which by Gods word is lawfull, both in marriages, and other things, as hereafter ſhall appear more at length, and till now of late in our Soveraign Lords time, which is otherwiſe by learning taught then his predeceſſors in times paſt long time have been, hath ſo continued the ſame, whereof yet ſome ſparks be left, which hereafter might kindle a greater fire, and ſo remaining, his power not to ſeem utterly extinct.

Therefore it is thought moſt convenient to the Kings Highneſs, his Lords ſpirituall and temporal, with the Commons of this Realm aſſembled in this preſent Parliament, that two things ſpecially for this time be with diligence provided

for, whereby many inconveniences have enſued, and many moe elſe mought enſue and follow: as where heretofore divers and many perſons, after long continuance together in Patrimony, without any allegation of either of the parties, or any other at their marriage, why the ſame matrimony ſhould not be good, juſt and lawful, and after the ſame Patrimony ſolemnized, and conſummate by carnal knowledge, and alſo ſometime fruit of children enſued of the ſame Marriage, upon pretence of a former contract made, and not conſummate by carnal copulation, (for proof whereof two witneſſes by that Law were onely required) been divorced and ſeparate, contrary to Gods Law, and ſo the true Patrimony, both ſolemnized in the face of the Church, and conſummate with bodily knowledge, and confirmed alſo with the fruit of children had between them, clearly fruſtrate and diſſolved: Further alſo, by reaſon of other prohibitions then Gods Law admitteth, for their lucre by that Court invented, the diſpenſations whereof they alwayes reſerved to themſelves, as in kindred or affinity between Couſin-germans, and ſo to the fourth and fourth degree, carnal knowledge of any of the ſame kin or affinity before in ſuch outward degrees, which elſe were lawful, and be not prohibited by Gods Law, and all becauſe they would get money by it, and keep a reputation of their uſurped juriſdiction, whereby not onely much diſcord between lawful married perſons hath (contrary to Gods Ordinance) ariſen, much debate and ſuit at the Law, with wrongful vexation, and great damage of the innocent party hath been procured, and many juſt marriages brought in doubt and danger of undoing, and alſo many times undone, and lawful heirs diſherited, whereof there had never elſe, but for his vain-glorious uſurpation, been moved any ſuch queſtion, ſince freedom in them was given by Gods Law, which ought to be moſt ſure and certain. But that notwithſtanding Marriages have been brought into ſuch an uncertainty thereby, that no Marriage could be ſurely knit and bounden, but it ſhould lye in either of the parties power and arbiter, caſting away the fear of God, by means and compaſſes to prove a precontract, a kindred and aliance, or a carnal knowledge, to defeat the ſame, and ſo under the pretence

of

of these allegations afore rehearsed, to live all the dayes of their life in detestable Adultery, to the utter destruction of their own souls, and the provocation of the terrible wrath of God, upon the places where such abominations were used and suffered. Be it therefore enacted by the King our Soveraign Lord, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, That from the first day of the Moneth of July next coming, in the year of our Lord God, 1540. all and every such Marriages, as within this Church of England shall be contracted betwæn lawful persons, (as by this Act we declare all persons to be lawful, that be not prohibited by Gods Law to marry) such being Marriages contracted and solemnized in the face of the Church, and consummate with bodily knowledge, or fruit of children, or child being had therein betwæn the parties so married, shall be by authority of this present Parliament aforesaid, deemed, judged, and taken to be lawful, good, just and indissoluble, notwithstanding any Precontract or Precontracts, of Matrimony not consummate with bodily knowledge, which either of the parties so married, or both shall have made with any other person or persons, before the time of contracting that marriage, which is solemnized and consummate, or whereof such fruit is ensued or may ensue as afore, and notwithstanding any Dispensation, Prescription, Law, or other thing granted or confirmed by Act or otherwise. And that no reservation or prohibition, Gods Law except, shall trouble or impeach any marriage without the Levitical degrees. And that no person of what estate, degree or condition he or she be, shall after the said first day of the Moneth of July aforesaid, be admitted to any of the Spiritual Courts within this the Kings Realm, or any his Graces other Lands and Dominions, to any processe, plea or allegation, contrary to this foresaid Act. Rep. 1 & 2 P. & M. 8. Rep. 1 El. 1.

This Act was not many years after repealed, as followeth.

2 & 3 *Ed.* 6. *cap.* 23.
Part of the Statute of Precontracts repealed.

WHereas in the two and thirtieth year of the reign of the late King of famous memory, King Henry the eighth, because that many inconveniences had chanced in this Realm, by breaking and dissolving good and lawful marriages, yea, whereupon also sometime issue and children had followed, under the colour and pretence of a former contract made with another, the which contract divers times was but very slenderly proved, and often but surmised by the malice of the party who desired to be dissolved from the marriage which they liked not, and to be coupled with another: there was an Act made, that all and every such marriages, as within the Church of England should be contracted and solemnized in the face of the Church, and consummate with bodily knowledge, or fruit of children or child, being had between the parties so married, should be by authority of the said Parliament deemed, judged, and taken to be lawful, good, just, and indissoluble, notwithstanding any precontract or precontracts of Matrimony, not consummate with bodily knowledge, which either of the persons so married or both, had made with any other person or persons, before the time of contracting that marriage which is solemnized or consummated, or whereof such fruit is ensued or may ensue, as by the same Act more plainly appear: Sithence the time of the which Act, although the same was godly meant, the untamelness of men hath ungodly abused the same, and divers inconveniences (intolerable in manner to Christian ears and eyes) followed thereupon, women and men breaking their own promises and faiths made by the one unto the other, so set upon sensuality and pleasure, that if after the contract of Matrimony, they might have whom they more favoured and desired, they could be contented by lightness of their nature, to overturn all that they had done afore, and not afraid in manner, even from the very Church door and Marriage feast, the man to take another spouse, and the espouse to take another husband, more for bodily lust and carnal knowledge,

ledge, their for surety of faith and truth, or having God in their good remembrance, contemning many times also the commandment of the Ecclesiastical Judge, forbidding the parties having made the contract, to attempt or do any thing in prejudice of the same.

Be it therefore enacted by the Kings Highnesse, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, that as concerning Precontracts, the said former Statute shall from the first day of May next coming, cease, be repealed, and of no force or effect, and be reduced to the estate and order of the Kings Ecclesiastical Laws of this Realm, which immediately before the making of the said Statute, in this case were used in this Realm: so that from the said first day of May, when any cause or contract of marriage is pretended to have been made, it shall be lawful to the Kings Ecclesiastical Judge of that place, to hear and examine the said cause: and (having the said contract sufficiently and lawfully proved before him) to give sentence for Matrimony, commanding solemnization, cohabitation, consummation and tractation, as it becometh man and wife to have; with inflicting all such pains upon the disobedients and disturbers thereof, as in times past before the said Statute, the Kings Ecclesiastical Judge, by the Kings Ecclesiastical Laws, ought and might have done, if the said Statute had never been made: any clause, article or sentence in the said Statute to the contrary in any wise notwithstanding.

Provided alwayes and be it enacted, that this Act do not extend to disannul, dissolve or break any marriage that hath or shall be solemnized and consummated, before the said first day of May next ensuing, by title or colour of any Precontract, but that they be, and be deemed of like force and effect, to all intents, constructions and purposes, as if this Act had never been had nor made: any thing in this present Act notwithstanding.

Provided also that this Act do not extend to make good any of the other causes, to the dissolution or disannulling of Matrimony, which be in the said Act spoken of and disannulled. But that in all other causes and other things there mentioned, the said:

ſaid former Act of the two and thirtieth year of the late King of famous memory, do ſtand and remain in his full ſtrength and power, any thing in this Act notwithſtanding. Stat. 1 Eliz. 1.

By theſe the inconveniency appeareth, of taking away or altering an ancient long-ſettled Law, practiſed long in all Chriſtian Countries, as this was; which had it not been good, probably the inconveniency and hurt of it had appeared in ſo long a time; and the Law for the Oath *Ex officio* and Purgation is of like antiquity and practice in all Chriſtian Countries, without inconvenience or hurt thereby ariſing as yet, that I ever could hear of; therefore ſuch Laws ought to be deeply weighed and conſidered of, before they be repealed or altered.

And now that I am ſpeaking of repealing and altering old Laws, and making new, I thought fit to cloſe this Tract with ſome Notes of mine, drawn up almoſt all of them in the time of the uſurped Government, and ſome after His Majeſties reſtauration, and communicated to the ſight of ſome of Quality, touching the repealing or altering of ſome old Laws, and making new. Some are already paſt and effected, as that for the Lords the Biſhops ſitting again in the Lords Houſe in Parliament, and other things. Theſe I offer with all humility to be conſidered of, if it ſhall by thoſe in Authority be thought fit, otherwiſe to be as unſaid: Proteſting that I retract, as before, any thing which is here mentioned, that ſhall appear contrary to Gods Word, His Majeſties Prerogative, or the Laws of the Land, or the juſt policy and government of any of His Majeſties Dominions.

Touching Parliaments.

AS a Parliament well conſtituted and acting regularly, conduces much to the happineſſe of King and Subject: ſo any exorbitancy or deviation therein (of which ſurely all unbiaſſed men cannot but confeſſe we have had too much ſad experience in the Long Parliament) works the contrary: *corruptio optimi peſſima.* Parliament proceedings.

In the time of the Long Parliament ſome, as it were, idoliz'd it, even almoſt to an opinion even of Infallibility, of which they have made too much advantage to the miſery of King and People.

Some adviſed then, that that great Wheel, that great Court ſhould have had its ſphere of activity, its known certain bounds publickly declared, and not have been like a great River prodigiouſly overflowing all its banks and bounds.

Such a Parliament acting regularly, is't not probable the Members thereof would not ſo much have thirſted to lengthen, much leſſe to perpetuate it?

They were called up to conſult; may not he that calls his Counſellor forbear conſulting him when he pleaſes, and diſmiſſe him?

The extent of an Ordinance of Parliament, having by ſome been tentor'd then, even almoſt to Infinity, might it not have been preciſely circumſcribed, and the exact definition of an Ordinance given? Ordinance of Parliament.

As alſo the juſt privileges of Parliament explicitely have been made known, that the Subject might not then have ſworn, or promiſed, or proteſted, to have maintained and obſerved them, and yet could not poſſibly know what they were. Privileges of Parliament.

That due care ſhould have been taken, that they might have been obſerved and kept inviolable on all ſides, neither diminiſhed nor ſtrained too high, and both the Members of the Houſes and the People to have had their juſt rights entire: and for this purpoſe that that Proteſtation then put in by the

The Biſhops Proteſtation.

Lords Spiritual the Biſhops, with their Petition to have the force removed that kept them from the Lords Houſe, ſhould have been well conſider'd on, and the right of Proteſtation in Parliament declared and maintained, being a great privilege. And whether after a juſt Proteſtation unjuſtly rejected, and the Members kept out of the Houſe, by force, that ſo proteſted and petitioned, whether the other Members could then have proceeded further in the Houſe?

In the late Kings time, in the beginning of his Reign, when the Earl of *Arundel* was impriſoned in the Tower, about his ſons marriage of the Duke of *Lenox's* daughter, being of the Bloud Royal, without the Kings conſent; the Lords would do nothing in their Houſe till he was reſtored, in regard he was committed onely for a miſdemeanour, and neither for Treaſon, Felony, nor breach of peace, in which caſes they then confeſſed, a Member of Parliament in Parliament time might be kept priſoner. And the Lords Spiritual being one of the three Eſtates, as 1 *Eliz.* 3. and elſewhere, and the King being none of the three Eſtates, (the contrary whereof hath been falſly held) but the Head, and the Lords Spiritual and Temporal, and the Commons, being but Members; and further, the Lords Spiritual being one of the greateſt Eſtates of the Realm, as 8 *Eliz.* 1. Some doubted whether one of the Eſtates can deſtroy another, and whether that come not near the contradicting that Axiom, that the Parliament cannot be *Felo de ſe:* whether that concerns not the Lords Temporal and Commons, as well as the Lords Spiritual? As for His late Majeſties aſſent, 'tis known how far the prevalent power in both Houſes then carried that, and other things too, to the miſery of the Kingdom: Who knows not in what condition the King then was? forced to flye by reaſon of the tumults from *Weſtminſter* to remoter places.

The King none of the three Eſtates.

And as touching that Act of Parliament for their expulſion out of the Lords Houſe, it is not to be forgotten, that when it was firſt brought into the Lords Houſe it was rejected, and ought not to have been brought in again that Seſſion; yet afterwards it was contrary to the order and courſe of Parliament, brought in again when a great part of the Lords were abſent,

abſent, if not upon juſt fears frighted out of the Houſe; and it being ſcarce ſafe for the King to deny them any thing, in that dangerous condition he was then in. As alſo that ſuch Conceſſions or Acts as then, contrary to the Kings free will, were wreſted from the King, were not to be accounted legal, or good, or valid; whereof ſeveral inſtances may be given heretofore of ſuch, and amongſt the reſt one 15 *E.*3. the King then yielded to and granted certain Articles, pretended at leaſt to have the form of an Act or Statute of Parliament, expreſly contrary to the Laws of the Realm, and his own Prerogative, to which he had aſſented to eſchew the dangers, which by denying the ſame were like to follow: in the ſame Parliament it was repealed in theſe very words following; *It ſeemed good to the ſaid Earls, Barons, and other wiſe men, that ſince the Statute did not proceed of our good will, the ſame be void, and ought not to have the name or ſtrength of a Statute, and therefore by their counſel and aſſent we have decreed the ſaid Statute to be void, &c.* And perhaps it deſerves to be thought of, how far in this caſe that Act of 42 *E.*3.*c.*1. reaches, where it is ſet down, that *the great Charter ſhould be kept in all points, and if any Statute be made to the contrary, it ſhall be holden for none.* And one eſpecial Law in that Charter is, for the preſervation of the rights and liberties of the Church, whereof this of the Lords Spiritual, their liberty of ſitting and voting in the Lords Houſe, is a known ſpecial liberty and privilege, and moſt ancient.

Proceedings of the Houſe of Commons.

If we look back to the Long Parliament, was it not fit that that Houſe of Commons ſhould have been juſtly regulated to act no further or otherwiſe, then according to their juſt power, and the Commiſſion and Summons by which they were called? which Commiſſion or Writ of Summons is the foundation of all power in Parliaments, as it is well expreſſed by the Lords and Commons aſſembled at *Oxford*, *Declaration of the Treaty*, *p.*15. What fearful exorbitances have been that way, the more ſad it is to remember, the more care ought to be taken to prevent it for the future. The Houſe of Commons in former times being deſired by the Lords Houſe to conſult with them *de arduis regni negotiis*, to which the Lords

are called, and the Houſe of Commons remembring their call and commiſſion, *ad conſentiendū hiis quæ tunc & ibidem, &c.* as in their Writ of Summons, humbly referred it back to the Lords as matters too high for them. And it may ſeem againſt the honour and gravity of Parliaments, or either Houſe, as alſo to the grievance of the Subject, for both or either Houſe, or the Committees of either of them, as in the Long Parliament, to trouble themſelves with matters of very ſmall or inferiour nature, much below them, and in caſes where the Law hath ſufficiently provided remedy, and is ſtill in force to be executed by the proper Judges. Were it in making new Laws thereabouts, that ought to be ſo: but I mean in making orders about the execution of ſuch Laws, which properly belong to the ordinary Judges thereof, and are uſually executed by them, eſpecially touching inferiour matters, it look'd then in that Long Parliament, as though they would have ſwallowed up all other courts, and made a kind of *Juſticium* in them, during the time of their Seſſion; ſuch as medling with the appointing of Churchwardens, and ſuch like petty matters. The late Long Parliament deviated much, eſpecially the pretended Houſe of Commons, then to omit, as being too notoriouſly deplorable, the Iliads of miſeries this poor Nation hath thereby undergone, beſides that horrid one of the murther of our late King, of ever bleſſed memory, King *Charles* the firſt, acted by a pretended Houſe of Commons. Was not that then too frequently practiſed worthy then of reformation? that is, the judiciary power being in the Lords Houſe, and the Commons Houſe having power onely over their own Members in ſome caſes, and not having power ſo much as to give an Oath; yet how often did they then upon ſmall matters, unworthy of their cogniſance, in regard they might have been ſo eaſily remedied by the known ordinary Laws of the Land, and the ordinary competent Judges thereof, call orthodox, conformable and worthy Miniſters, to appear before them from very diſtant remote places, ſometimes near upon 200. miles, for ſetting a rail about the Communion Table, according to the command of the Ordinary; or matters of ſuch inferiour nature: theſe brought on and fomented

mented by Inconformiſts then, to the great miſchief to this Nation, too too much favoured, promoted and proſecuted by the then prevailing power. The Fees and charges were then very high, inſomuch as ſome Miniſters were almoſt, if not altogether, undone, before they could get up thither; and when they came, by reaſon of multiplicity of buſineſſe in the Commons Houſe, they ſtaid there long and upon great charge, paying high Fees ſtill to the Serjeant or other Officers of the Houſe, whileſt they lay under reſtraint, which oftentimes was very long. When a charge after long delay was given in, then they gave their anſwer, after a long ſtay too: Then a Committee of many Members was appointed to examine witneſſes, which was done without oath; then after a long time the cauſe was reported, many of theſe Members not having heard the whole cauſe, but ſome one part, ſome another; yet often concurring at the voting and reporting the cauſe to the Houſe of Commons: which was a ſtrange kind of proceeding, to call it no worſe. In the Star-chamber and High-commiſſion none uſed to give ſentence but ſuch as heard all the cauſe, and they uſually excuſed themſelves when they had not heard all the cauſe. Now, when the Houſe of Commods had proceeded thus far upon the matter, yet they had done little or nothing, but vexed and undone a poor and perhaps guiltleſs Miniſter: for they were to tranſmit the cauſe to the Lords Houſe, and there to begin it *de novo*, examine the witneſſes again upon oath, which, as before, the other Houſe could not do. And here 'tis to be conſidered, whether or no it were not *anceps perjurium*, a dangerous temptation to witneſſes, that perhaps have ſpoken too largely being unſworn, will, if but for fear of loſs of Reputation, confirm upon Oath what they have ſaid without Oath. It is to be feared alſo, ſome poor men foreſeeing this unevitable courſe of undoing them, have either wronged their owne cauſe, and betrayed their innocence, by confeſſing themſelves guilty; or, *ad redimendam vexationem*, compounded with their proſecutors, even to their own undoing, or well nigh. If there had been cauſe, and that it could not properly in an ordinary way have been remedied by the proper competent ordi-

ordinary Judges; why ſhould not the cauſe have been begun, heard and determined in the Lords Houſe at firſt?

Could the Houſes, eſpecially the Commons Houſe, then have been brought into ſuch due order, as not to act *extra ſpheram activitatis ſua*, 'tis well to be hoped they would not, as above, have been deſirous to lengthen or perpetuate that Parliament, when they can, as by right, repeal no old, nor make no new Law, nor tax the Subjects eſtate, nor make Ordinances to have the force of Laws, without His Majeſties aſſent. King *Henry* the Eighth ſuffered the Houſes of Parliament in *Ireland*, for a matter of two years or thereabouts, to continue petitioning him to diſſolve them and diſmiſs them home, which he would not do till he ſaw cauſe. Though this is not in his commendation, yet hereby the juſt power of the King appeared, and the right of his Prerogative, which hath been too long and too much trampled upon. And ſurely the Law in this point is the ſame in *England* as in *Ireland*, that the juſt bounds and limits on all ſides might be preſerved inviolate.

Touching the Age of Parliament-men.

Age of Parliament-men.

In the Lords Houſe none ſit there under 21. years of age, and ſome wiſh none might under 30. though there they are ſingly for themſelves, and repreſent not others, as in the Houſe of Commons. But in the Houſe of Commons there hath been ſometimes, as was in the Long Parliament, Members about 16. or 17. years of age, if not ſome of them under, and their Suffrages and Votes were of as much force as the eldeſt, moſt experienced in the Houſe. And it hath been the obſervation of ſome experienced and wiſe Parliament-men, that oftentimes in that Houſe thoſe that had the ſhorteſt wings were the higheſt flyers, and ſuch as theſe could adde number, and ſo conſequently weight, to a ſide.

The inconvenience and hurt that aroſe from hence is eaſily demonſtrable, and hath too much appeared by frequent experience.

Some have wiſhed that there ſhould have been no Member of the Commons Houſe, under the age of 30. years, there being

being ſo large a field whereout to chooſe Parliament-men for every place, and it being even as it were *ex diametro* contrary to the nature and denomination of a Parliament, which is but a great Senate, ſo called *à Senioribus*, the conſtituting Members thereof.

Touching the Election of Parliament-men.

Election of Parliament-men.

Some have adviſed that it ſhould be clearly free, without ſuch ambient means as were uſed in the Long Parliament by ſome Factions: and whereas every man may give his ſuffrage for Counties, that hath 40 *s. per annum*, and in Cities and Corporations without ſuch a value, that being the old cuſtom. And that which was 40 *s. per annum* in former Ages, is worth now ten times as much well nigh, if not more: So conſequently the Electors ſhould be of better eſtate.

The great number of Burroughs & Corporations.

There being ſuch a vaſt diſproportion betwixt the Cities, (alwayes excepting *London*) and Corporations, Burroughs eſpecially, and the Counties wherein that Burrough and Corporation is ſcituate for number of Inhabitants, which heightens the concernment. In ſome Counties there being ſo many Corporations, that the County having but two Parliament-men to repreſent them, be the County never ſo great; yet every petty Corporation (whereof in many Counties, eſpecially in the Weſt, there are very many ſuch) hath as many to repreſent it, of equal power in the Commons Houſe, with any other Member of County or City. So that the Parliament-men ſerving for Cities and Burroughs, are in number by many degrees far much more then for Counties, which hath been conceived to have been no ſmall cauſe of our late troubles.

Some adviſed for that reaſon, and for other reaſons too well known, notorious, and obvious to every indifferent eye; that the number of theſe Burroughs ſhould be much leſſened, or at leaſtwiſe that power of Electing Parliament-Members: Eſpecially ſo many of theſe Corporations, Cities and Burroughs, having in theſe late troubles ſo clearly forfeited their Charters.

Touching

Touching the manner of proceeding in Parliament, in the Commons Houſe in the Long-Parliament.

It hath been ordinarily obſerved as is touched above, that in Committees in that Long-Parliament, ſome have given their Suffrage or Vote Negatively or Affirmatively, upon the cauſe when it was to be reported; though they have not heard the whole cauſe, and ſometimes but a ſmall part of it.

Great numerous bodies being ſometimes too ready to divide into parties and factions, as hath been ſeen too often in that Long-Parliament, and ſo conſequently endeavouring to heighten their own ſide; have taken hold of, and created all occaſions and advantages that might further it. Oftentimes the Younger tyring and wearying out the Elder, or more incurious Members by long Speeches, and continuing the ſitting of the Houſe long and late in the night, till it was grown thin, and by the departure out of it, of ſo many of the more Aged and leſs ſedulous Members, that the remaining party, according to the deſtined and ſtrongly preoperated deſign, grew prevalent.

To inſtance no more (and happy had it been for theſe miſerable Kingdoms, that it never could have been inſtanced) that fatal great Declaration, or as the late bleſſed King and Martyr called it, the Appeal to the People, hammer'd out that way, by wearying out ſo many of the Members, by ſitting ſo long, even all or the greateſt part of the night, may witneſſe this to all poſterity: Which gave occaſion to ſome to call it a Nocturnal Parliament, but very appoſitely did Sir *Benjamin Rudyard*, one of thoſe ancient Members that was ſo wearied out, when one asked him what he thought of that Vote ſo carried for that Declaration, ſo late in the night, or rather in the next morning? anſwered, that it looked like the verdict of a ſtarved Jury.

Many other indirect wayes (to call them no worſe) were uſed by intereſted parties in that Long Parliament, to compaſs their ends, much by ſurpriſes, when too many Members, either

either wearied out, as before; or elſe gone out, ither upon their pleaſure or private concernments; or thereupon abſenting themſelves from the Houſe, then the Houſe being thin'd according to their deſires, they eaſily gained the major part of the ſuffrages, or elſe clap'd in early into the Houſe, whileſt the negligent party were in bed, or abſent upon their private buſineſs, neglecting the publick to which they were called; and ſo carried it, and by ſuch like wayes contrived and effected their laboured ends, perhaps by their engines ſo laid, to draw away many, whoſe company they would gladly have been rid of, out of the Houſe, and to keep them out when ſo abſent, or to hinder them from coming in at all. Such may not improperly be called Parliament Decoyes, or rather, as in that Long Parliament, when ſome of the Members impeached eleven of their number, upon one of them in the charge againſt him they fixed the *ſtigma* of the *Parliament-driver*, and when it made for them, imputed it to him for a crime.

It would be voluminous to reckon up the ſeveral ſpecies of the ſiniſter artifices and gins, which were then dexterouſly us'd in that Long Parliament, to promote unrighteous ends; very often by tumults, which were at the beſt of ſome factious perſons, by clamours and menaces, as it were, to force away ſuch Members as they knew would oppoſe their deſigns. By Petitions too, which were but a kind of Tumults too in another dreſs, and moſt ſhamefully carried on and gained many times; whether we conſider the inconſiderableneſs of the Petitioners, Oyſter-women, Barbers, School-boyes, (as in ſome Petitions againſt Biſhops) if not others, as much if not more contemptible: or whether we conſider the number of the Petitioners, many ſubſcribing them that knew nothing of the contents of the Petition, if not ſometimes giving power, with a ſtrange implicite faith, to certain men of their Faction, to ſet to their hands to what Petitions ſoever their party ſhould frame; the Petitions perhaps framed in *London*, and never ſent into the Country, but thouſands of hands ſent up in Schedules, to be put to whatſoever the framers ſhould pleaſe; if not alſo, which is much the ſame, ſome Petitions ſent up out of far diſtant remote parts from *London*, with very many

hands ſubſcribed, and the Petitions after they were come up to *London* altered, and yet the ſame hands continued or ſet to it: Inſomuch as in the time of that Long Parliament it was at leaſt once obſerved, that ſome Petitions, or a Petition, with ſome thouſands of hands ſubſcribed, and coming from ſome parts remote from *London*, and brought into the Houſe of Commons, and there read in the morning, took notice, being mentioned in the body of the Petition, of ſome paſſages of words ſpoken in the Houſe the foregoing evening: whereupon one merrily asked, What notable Mercury had that laſt night gone from *London* into thoſe remote parts, and got ſo many hands in a nights time, and brought them back thither that morning? This did almoſt put ſome to the bluſh, if that had been poſſible; happy could it have *ſuffundere ſanguinem, ruborem*; the want whereof did *effundere ſanguinem, cruorem*: So common was this ſtratagem of Petitioning grown, that it gave occaſion to ſome Satyriſt, to paſte up that Diſtich upon one of the Back-doors leading to the Lords Houſe, *viz.*

Bellua multorum capitum populus fuit olim,
At nunc multarum bellua fit manuum.

It was long before the *Romans* would publiſh a Law againſt Parricide, and ſuch unnatural and horrid crimes, and the Hiſtorian gives the reaſon, *Ne dum prohibent, jubent*; and haply that reaſon may well forbid me and others from too much enumerating the unjuſt ſubtilties and deceitful wayes of this kind; and rather were it to be wiſhed, that if poſſible they were buried in perpetual oblivion, and no Topicks were left of them, except as Land-marks to avoid and deteſt them: For which ends, to good purpoſe perhaps it might be time well ſpent, to ruminate upon the Journals of the Long Parliament, with their Declarations, Ordinances and Remonſtrances, and His Majeſties Declarations anſwering and confuting them, eſpecially that of *Aug.* 12. 1642.

For reformation of ſuch obliquities, of tireing out the Members, and ſurpriſing of them in a thin Houſe, (for as to that way of Petitions and Tumults, 'tis to be hoped it will

not

not be attempted again.) Some wiſhed this might have been remedied, if thought fit, by fixing a competent time for ſo many hours of the day to ſit in, not to be exceeded but by conſent of the major part of the Houſes, to be conſtituted as hereafter followeth.

A competent number of Parliament-men to be at every debate.

That no Vote ſhould have been paſſed in either Houſe, without a matter of two parts of three, or more, (as ſhould be agreed upon) of the Houſe heard the matter fully debated; and that no matter to be debated ſhould be propounded till ſuch a number had been viſibly preſent in the Houſe, which might at the firſt ſight have been eaſily diſcerned, if the ſeats in the Houſe had been ſo particularly diſpoſed, that without telling their particular number by the Clerks, or any other, it might have been known: which might have been eaſily done thus:

The manner how it may be conſtantly obſerved.

In the Houſe of Commons, each long ſeat in the uppermoſt part thereof, down towards the door, to contain thirty or forty partitions, or more or leſs, as the length of the ſeat will bear, ſo that in each partition there could but one man ſit, and an order made which ſeat ſhould be firſt filled, and which next, and ſo ſucceſſively one after another, and none to go into the ſecond ſeat till the firſt were filled, nor into the third till the ſecond were filled, and ſo to the reſt in like manner. And to make it at the firſt view clear, the number of every partition in order to be in great legible figures ſet over the head of the perſon that ſits in that partition, as 1. 2. 3. 4. &c. then it being known (being made ſo plain and certain) how many perſons each ſeat, when filled, contained, as thirty or forty, &c. each ſeat being to contain equal numbers, if that may be, at leaſt each ſeat of the ſide, ſo many and each at the end, ſo many equally. It is quickly determined, by ſeeing how many ſeats are filled, or how many are in ſuch ſeats: whether the number required to be at the paſſing ſuch Vote, be then there or not. The ſeats for Privy Counſellors may, notwithſtanding this, be diſtinct and kept for them, and for Committees ſome ſuch courſe to be taken too, if need were, in a due proportion.

In the Lords Houſe ſuch diſtinctions of ſeats and partitions

cannot be conveniently ſo done, in regard of the requiſite priority of place there, which is otherwiſe then in the Houſe of Commons; yet the competent number there, (that Houſe being not near ſo numerous as the Commons Houſe) which had need be as many in proportion as the Commons Houſe, might have been quickly and eaſily diſcernable.

The number of forty in the Commons Houſe, and a much leſſe in the Lords Houſe, though by many accounted to be a competent number to make up an Houſe; we have ſeen how upon deſign ill uſe was made of it in the Long Parliament, which could not eaſily (perhaps not at all) have been done with ſo great a number. To inſtance no more, the pitiful number of Peers preſent at the paſſing that pretended Ordinance for the late Lord Archbiſhop of *Canterbury's* death, may be thought on.

Fees to the Officers of Parliament.

Some adviſed, that it might have been conſidered, what Fees ſhould have been taken by the Officers of Parliament, Clerks, Serjeants, and other Officers: ſome then conceiving them to have been very high.

Touching new Laws, Declarations, &c. to be made, and old Laws to be repealed and altered.

WE have ſeen in that Long Parliament what ill conſtructions were made by ſome men of Precedents in foregoing Parliaments, accounting what has been once done there, *quo jure, qua injuria*, right and good, and to be deduced into practice; even thoſe ſtrange irregular acts in the tumultuous times of *Richard* the ſecond, and *Henry* the fourth: nay, we have ſeen how *Spenſers* Treaſon, diſtinguiſhing the perſon and office of the King, ſo declared to be Treaſon by Act of Parliament many ages ſince, even urged for right; to inſtance no more.

Some have adviſed, that ſuch precedents, acts and proceedings ſhould have been examined, and by publick Declaration

ration by Act of Parliament purged or aboliſhed, or declared illegal.

And that, if but for that reaſon of preventing that male conſtruction of citing ill precedents for Law, that an inſpection ſhould have been made into the Acts of Amneſty and Oblivion, paſſed in the firſt years of the Long Parliament, and alſo that paſſed this laſt Parliament. We have ſeen, eſpecially if we looked Northward, how ſoon after ſuch Acts of Indempnity and Amneſty, the Delinquents (as though they thought themſelves juſtified in their former crimes) fell again into the ſame. Acts of Oblivion, &c.

And that there ſhould in thoſe paſt (and due care be had for the ſame in the future) have been a ſpecification made of the crimes and offences intended there to have been pardoned and put into oblivion, leſt otherwiſe implicitely and inſenſibly they might have been taken not to be crimes, and Loyalty and Fidelity (tacitly at leaſt) accounted crimes, and ſo creep into precedent and example for the future.

And that the firſt Paragraphs in the late Act of Pardon, Indempnity and Oblivion, might, if thought fit, be conſidered of; where in the firſt place are pardoned, *All and all manner of Treaſons, Miſpriſions of Treaſon, Murthers, Felonies and Offences, crimes, &c. counſelled, commanded, acted or done, ſince the firſt day of January, 1637. by any perſons before the 24. day of June, 1660, &c. by vertue or colour of any command, power, authority, commiſſion, warrant or inſtructions from His late Majeſty King* Charles, *or His Majeſty that now is.*

Though there might be ſome obliquity, error or abuſe in the execution of Commiſſions from their Majeſties, yet ſome ſtumble at theſe expreſſions of Treaſons, Murther, &c. to be committed by Commiſſion from the King, as without all queſtion was committed by Commiſſions granted by others, and yet here they look like equal and eaven crimes: which no loyal man can own. It neither hurts nor hinders the pardon, but rather more ſtrengthens it, that the crimes pardoned are ſpecified: and let the application be made onely to them that are guilty of them, not to the guiltleſſe, and ſuch as deſerve honour and reward, for that which ſome would at leaſt

leaſt imply to be criminal; much leſſe no ignominy or reproach.

Surely the Loyal party that acted according to the known Laws, for ſo acting needed not His Majeſties pardon: *Facinus quos inquinat æquat.* Some men cannot think themſelves cleared, except they can taint others guiltleſſe with the imputation at leaſt of theſe crimes, whereof they themſelves onely are culpable; and it is a queſtion, whether their true meaning be not, that they would have an Exculpation (a term we have more lately had from the North) and even a juſtification from their known crimes, at leaſt to be accounted no greater crimes, then the actions of thoſe that acted by the Kings authority, according to the known Laws of the Land, which they well know are no crimes, but the contrary.

It is obvious to every eye, how ſome have ſweat to have juſtified all the illegal Acts of the Long Parliament. Some make little or nothing of the endeavours, that then were, to have killed the late King in Battel, but onely of putting him to death in cold bloud.

Reſtitution of ſome goods where the property is not altered.

And that, if thought fit, that ſuch goods whereof the property is not altered, as Houſhold-ſtuff, Plate, Furniture of beds, Pictures, Hangings, eminent Jewels, or ſuch like, plundered or taken away wrongfully, either by pretended Sequeſtrations, ſpoil or otherwiſe, ſhould be reſtored to the owners, or (in ſome caſes) a juſt value repaid for them, with a juſt conſideration to be had of the parties from whom they were taken, and of their actings; and not to remain, as they do, in the view of the owners, perhaps purpoſely in deſpight expoſed to ſuch publick view. This works contrary to His Majeſties pious intention, and that Act of Oblivion; it continues, does not aboliſh, the memory of our former diviſions, when the ſpoiled ſhall ſee, as a continual Eye-ſore, their proper goods in the poſſeſſion of the ſpoiler; whileſt the ſpoiled for want of them perhaps is ready to ſtarve, and perhaps the ſpoiler makes his livelyhood out of them, if not ſteps of preferment too. The Heathen Poet could ſay of the Civil wars of *Rome*,

Bella geri placuit nullos habitura triumphos.

But

But ſurely this looks like a continued triumph after the Warre.

Some have wiſhed that that motion in the laſt Parliament, or Aſſembly, or Convention, that ended in *December*, 1660. made in the Lords Houſe, might be renewed, that the ſpoyled party might at leaſt in ſome good meaſure be repaired by ſome publick Tax made for that purpoſe, and due conſideration to be had of ſuch ſuffering ſpoyled perſons, that conſtant never-changing Loyalty may have ſome encouragement and comfort, beſides that of a good conſcience. Reparation to perſons ſpoyled.

Some have wiſhed that it might have been by Act of Parliament declared, if thought fit, that the Long Parliament (notwithſtanding that Act for the continuing of it till it ſhould be diſſolved by Act of Parliament) was diſſolved or declared void and null, from ſuch a day as ſhould have been by advice of the Judges and learned in the Laws agreed upon. Touching the Long Parliament.

And that alſo, if thought fit, conſideration ſhould have been had particularly from what time that diſſolution, annulling or making void ſhould have commenced; whether from the time that His late Majeſty was driven from the Parliament by tumults and riots; which, as is known, ſome, if not many Members, eſpecially of the then Commons Houſe, (in that Long Parliament) that took up Arms againſt the King, were ſo far from cauſing to be ſuppreſſed, though His Majeſty deſired it, that they were ſet on by them; as is notorious.

And alſo, if thought fit, that if not from that time, yet from the time they voted to live and dye with the Earl of *Eſſex*, by them voted to be their General againſt the King, and upon the matter cauſing thoſe Members to leave the Houſe that would not vote with them. And whether that His Majeſty calling them afterwards a Parliament, as they alledged, when they were in Arms againſt him, (though perhaps His Proteſtation to the contrary was entred in the Council-book) could any wayes entitle them to a lawful Parliament?

And alſo, if thought fitting, that it ſhould have been by Act of Parliament declared, that any Member of Parliament offending

offending againſt 25 *E.* 3. in raiſing or bearing Arms, or maintaining them againſt the King, *ipſo facto* ceaſes to be a Member of Parliament, for that a Rebel and a Parliament-man are *diviſa*.

And alſo, if thought fit, that the Judges of the Land, conſulting together, ſhould have declared (as they did in King *James* his time, in that caſe about *Watſon* and *Clerk*, the Seminary Prieſts, that the Kings Coronation was but a Ceremony, and that without it the King was a complete King) that that Long Parliament was diſſolved from ſuch a day, as they ſhould have found by Law that it was diſſolved or annulled; whether it was from the time of His late Majeſties expulſion from his Parliament, as before; or from the time of voting to live and dye with the Earl of *Eſſex*, or of their Votes of no further addreſſes to the King, who called them to conſult with him; whether they did not then openly diſſolve themſelves, by refuſing to conſult with him? or from his death, when they could conſult no more with him?

And alſo, if thought fit, that it ſhould have been ſo declared and enacted, that though the King had paſſed an Act, that the Parliament ſhould ſit till they were diſſolved by an Act of Parliament; and that if it had been expreſſed that it ſhould be ſo, notwithſtanding that His Majeſty ſhould dye in the interim; yet ſuch an Act could not bind him nor his Succeſſor, eſpecially when in that Act for continuing that Parliament, till by ſuch Act it ſhould be diſſolved, there is no ſuch mention that it ſhould continue after his death that called it; and that the King cannot be concerned, at leaſtwiſe concluded any wayes in any Act of Parliament, to his damage, prejudice or diminution of his Royal Prerogative or Authority, except (at leaſt) he explicitely and freely conſent to it, & be ſpecially comprized and named in that Act to that purpoſe; or whether he can though he ſo conſent: it following plainly, that if by taking up Arms, or bearing Arms againſt the King, a Parliament-man ceaſes to be ſo, nor can ſit any longer in the Houſe. Then in that caſe none ought truly to be accounted ſecluded or excluded Members, but onely theſe that would uot then vote to live and dye with the Earl of

Eſſex,

Eſſex, nor would aſſent to the raiſing of arms againſt the King; but thereupon left the Houſe, or were expelled thence either by the Votes of the reſt, or by menaces, juſt fear, that might *incidere in conſtantem virum*, or by tumultuous force: ſo that if the Parliament (if not by the reaſons aforeſaid, yet) at leaſt by the death of the King being diſſolved, as to think the contrary is moſt void of reaſon or truth; if, I ſay, it had not been ſo diſſolved, then thoſe ſecluded or excluded Members, they onely ought to have been reſtored, and none of the reſt that acted againſt the King by taking up Arms againſt him, or acting againſt him, ought to have been reſtored: Such offended againſt the Act of 25 *E.*3. raiſing Arms againſt the King, &c. counterfeiting or making a new Great Seal, &c. and their being Members of Parliament, being as before inconſiſtent; and for the void places His Majeſty to iſſue out Writs for free, legal and new Elections.

The keeping of the Records in the Tower.

And alſo, that the keeping of the Records in the Tower, ſhould be in the hands of a known truſty Loyaliſt, and none other, in regard of the danger of imbezelling or corrupting them, by any perſon of other principles not affected to Monarchical government by Law eſtabliſhed, to the great damage of the King and his Subjects.

The Militia.

And alſo, that the Militia, and all Offices and places of truſt and concernment, for the peace and ſafety of the Kingdoms, and for the prevention of future Faction, Sedition and diſturbance of ſuch peace, and endangering ſuch ſafety, ſhould be committed onely to the hands (and eſpecially for a competent ſpace of time, as by ſuch free and legal Parliament, or by His Majeſty ſhall be agreed upon) of known experienc'd Loyaliſts, and not to any that may be reaſonably preſumed or ſuſpected to be otherwiſe. That rule may ſomtimes hold, and not be rejected: *Qui ſemel eſt malus, ſemper præſumitur eſſe malus, præſertim in eodem genere delicti.*

Oaths of Allegeance and Supremacy explained.

And alſo, if thought fit, that the Oaths of Allegeance and Supremacy, ſhould have had ſome explanation, alteration or emendation, eſpecially in that point of not *reſiſting the King*.

In the ſecond Homily of Obedience, which book is confirmed by Act of Parliament, it is there expreſſed *in terminis*, as

the Doctrine of the Church of *Engl.* that it is not lawful *in any case to resist the King.* That this should expresly have been put into these Oaths, and that all persons whatsoever, which are to take the Oaths of Allegeance or Supremacy, or that have taken them, may take them with such emendations; it being too notorious what strange interpretations have been made of these Oaths, as that they were made onely against the Papal power, and as though nothing else were to be resisted. And in the beginning of the Rebellion in *Scotland*, the orthodox Divines of *Aberdeen* maintaining, according to that Doctrine of the Church of *England*, That in no case the King is to be resisted, and that so to do was contrary to Gods Word, and to the opinion and practice of the primitive Christians: The other Divines, fomentors of that Rebellion expresly denied this, and alledged that the reason why the primitive Christians resisted not, was because *deerant illis vires*; the very same reason that *Bellarmine* gives for the same: so well do these two Factions concur. Though by the History of those times it appears, and *Tertullian* openly pleads it against the Emperor, that it was not for want of strength, for they had enough, but that it was contrary to their conscience, guided by Gods Word, so to resist. And therefore why not much need, that all persons whatsoever should take this Oath, to declare their opinion in this point?

Robbery, the Law to be altered.

And also, if thought fit, that the Law concerning Robbery ought to be in many cases, and especially for the first offence, mitigated, and not made capital: but that restitution be made to the party robbed, and if the Robber be not able to do it, then to be forced to work it out. Which course, some think, would probably more terrifie idle persons that turn thieves, who had rather dye desperately, then lead perhaps a long and wearisom life. Hereby many may repent and amend, and do good service to their King and Countrey. The party robbed also hereby gets restitution, which seldom or never happens as the Law now is. Our Law (contrary to the practice in other parts of the Christian world) hereby becomes harder then the Levitical Laws: Some have hereupon said, that the Gospel, the Spirit killeth, and the Letter giveth life,

life, contrary to St. *Paul*, which ſeemeth ſomething Anti-Evangelical; The yoke of the Goſpel ſhould be eaſie.

And alſo, if thought fit, that none ſhould be condemned to dye upon a ſingle teſtimony, when there is no other kind of proof by circumſtances, or violent or vehement preſumptions, equivalent to a witneſs, that makes a kind of *ſemiplena probatio* at the leaſt, as in the Canon Law: *In the mouth of two or three witneſſes every ſaying ſhall be confirmed*, ſayes the Levitical Law: which is repeated in the New Teſtament, and in a manner at leaſt is made *Lex Evangelizata*. The Law-maker (Truth, Juſtice in the abſtract) could as well have ſaid, *In ore unius vel duorum teſtium*, as *duorum vel trium*, if he had thought it ſo fitting: and yet (as before) the Goſpel ſeems to pinch harder then the Law. To that Objection, That then many Malefactors would eſcape; it may be anſwered, That ſecret things belong to the Lord, and to him they are to be left, and that it is better ten Knaves ſhould eſcape, then one guiltleſs man ſhould be hanged. We have ſeen and heard, how even in a manner miraculouſly God hath often revealed murther and great crimes, that we may ſuppoſe, that when ſuch crimes cannot be in the ordinary way detected, it pleaſes God they ſhall be done extraordinarily. Many inſtances might be given of the ſad conſequences, by putting to death upon the teſtimony of a ſingle witneſſe: Judge *Forteſcue*, in his book *De laudibus legum Angliæ*, relates a paſſage about a Gentlewoman in *Sariſbury*, that was put to death, even burnt at a ſtake, for murdering her husband, and that ſentence given upon the teſtimony of a ſingle witneſs, which witneſs not long after upon his death, voluntarily and in a moſt penitent manner confeſſed, he had given falſe witneſs againſt that Gentlewoman, and that ſhe was no wayes guilty of that murther for which ſhe was put to death: And Judge *Forteſcue* there ſpeaking of the Judge that gave ſentence againſt her, hath theſe words, (as I take it, or to this effect, the book is not now by me) as they are there in the *Latine* verſion out of the Law-*French*; *Sæpius iſte judex mihi faſſus eſt, quod nunquam in vita ſua animum ſuum ſuper hoc facto purgaret.*

Againſt condemnation upon a ſingle teſtimony.

A notable inſtance this way (to relate no more, being numerous

offending againſt 25 *E.* 3. in raiſing or bearing Arms, or maintaining them againſt the King, *ipſo facto* ceaſes to be a Member of Parliament, for that a Rebel and a Parliament-man are *diviſa*.

And alſo, if thought fit, that the Judges of the Land, conſulting together, ſhould have declared (as they did in King *James* his time, in that caſe about *Watſon* and *Clerk*, the Seminary Prieſts, that the Kings Coronation was but a Ceremony, and that without it the King was a complete King) that that Long Parliament was diſſolved from ſuch a day, as they ſhould have found by Law that it was diſſolved or annulled; whether it was from the time of His late Majeſties expulſion from his Parliament, as before; or from the time of voting to live and dye with the Earl of *Eſſex*, or of their Votes of no further addreſſes to the King, who called them to conſult with him; whether they did not then openly diſſolve themſelves, by refuſing to conſult with him? or from his death, when they could conſult no more with him?

And alſo, if thought fit, that it ſhould have been ſo declared and enacted, that though the King had paſſed an Act, that the Parliament ſhould ſit till they were diſſolved by an Act of Parliament; and that if it had been expreſſed that it ſhould be ſo, notwithſtanding that His Majeſty ſhould dye in the interim; yet ſuch an Act could not bind him nor his Succeſſor, eſpecially when in that Act for continuing that Parliament, till by ſuch Act it ſhould be diſſolved, there is no ſuch mention that it ſhould continue after his death that called it; and that the King cannot be concerned, at leaſtwiſe concluded any wayes in any Act of Parliament, to his damage, prejudice or diminution of his Royal Prerogative or Authority, except (at leaſt) he explicitely and freely conſent to it, & be ſpecially comprized and named in that Act to that purpoſe; or whether he can though he ſo conſent: it following plainly, that if by taking up Arms, or bearing Arms againſt the King, a Parliament-man ceaſes to be ſo, nor can ſit any longer in the Houſe. Then in that caſe none ought truly to be accounted ſecluded or excluded Members, but onely theſe that would uot then vote to live and dye with the Earl of *Eſſex*,

Eſſex, nor would aſſent to the raiſing of arms againſt the King, but thereupon left the Houſe, or were expelled thence either by the Votes of the reſt, or by menaces, juſt fear, that might *incidere in conſtantem virum*, or by tumultuous force: ſo that if the Parliament (if not by the reaſons aforeſaid, yet) at leaſt by the death of the King being diſſolved, as to think the contrary is moſt void of reaſon or truth; if, I ſay, it had not been ſo diſſolved, then thoſe ſecluded or excluded Members, they onely ought to have been reſtored, and none of the reſt that acted againſt the King by taking up Arms againſt him, or acting againſt him, ought to have been reſtored: Such offended againſt the Act of 25 *E.*3. raiſing Arms againſt the King, &c. counterfeiting or making a new Great Seal, &c. and their being Members of Parliament, being as before inconſiſtent; and for the void places His Majeſty to iſſue out Writs for free, legal and new Elections.

The keeping of the Records in the Tower.

And alſo, that the keeping of the Records in the Tower, ſhould be in the hands of a known truſty Loyaliſt, and none other, in regard of the danger of imbezelling or corrupting them, by any perſon of other principles not affected to Monarchical government by Law eſtabliſhed, to the great damage of the King and his Subjects.

The Militia.

And alſo, that the Militia, and all Offices and places of truſt and concernment, for the peace and ſafety of the Kingdoms, and for the prevention of future Faction, Sedition and diſturbance of ſuch peace, and endangering ſuch ſafety, ſhould be committed onely to the hands (and eſpecially for a competent ſpace of time, as by ſuch free and legal Parliament, or by His Majeſty ſhall be agreed upon) of known experienc'd Loyaliſts, and not to any that may be reaſonably preſumed or ſuſpected to be otherwiſe. That rule may ſomtimes hold, and not be rejected: *Qui ſemel eſt malus, ſemper præſumitur eſſe malus, preſertim in eodem genere delicti.*

Oaths of Allegeance and Supremacy explained.

And alſo, if thought fit, that the Oaths of Allegeance and Supremacy, ſhould have had ſome explanation, alteration or emendation, eſpecially in that point of not *reſiſting the King*.

In the ſecond Homily of Obedience, which book is confirmed by Act of Parliament, it is there expreſſed *in terminis*, as

the Doctrine of the Church of *Engl.* that it is not lawful *in any caſe to reſiſt the King.* That this ſhould expreſly have been put into theſe Oaths, and that all perſons whatſoever, which are to take the Oaths of Allegeance or Supremacy, or that have taken them, may take them with ſuch emendations; it being too notorious what ſtrange interpretations have been made of theſe Oaths, as that they were made onely againſt the Papal power, and as though nothing elſe were to be reſiſted. And in the beginning of the Rebellion in *Scotland*, the orthodox Divines of *Aberdeen* maintaining, according to that Doctrine of the Church of *England*, That in no caſe the King is to be reſiſted, and that ſo to do was contrary to Gods Word, and to the opinion and practice of the primitive Chriſtians: The other Divines, fomentors of that Rebellion expreſly denied this, and alledged that the reaſon why the primitive Chriſtians reſiſted not, was becauſe *deerant illis vires*; the very ſame reaſon that *Bellarmine* gives for the ſame: ſo well do theſe two Factions concur. Though by the Hiſtory of thoſe times it appears, and *Tertullian* openly pleads it againſt the Emperor, that it was not for want of ſtrength, for they had enough, but that it was contrary to their conſcience, guided by Gods Word, ſo to reſiſt. And therefore why not much need, that all perſons whatſoever ſhould take this Oath, to declare their opinion in this point?

Robbery, the Law to be altered.

And alſo, if thought fit, that the Law concerning Robbery ought to be in many caſes, and eſpecially for the firſt offence, mitigated, and not made capital: but that reſtitution be made to the party robbed, and if the Robber be not able to do it, then to be forced to work it out. Which courſe, ſome think, would probably more terrifie idle perſons that turn thieves, who had rather dye deſperately, then lead perhaps a long and wearifom life. Hereby many may repent and amend, and do good ſervice to their King and Countrey. The party robbed alſo hereby gets reſtitution, which ſeldom or never happens as the Law now is. Our Law (contrary to the practice in other parts of the Chriſtian world) hereby becomes harder then the Levitical Laws: Some have hereupon ſaid, that the Goſpel, the Spirit killeth, and the Letter giveth life,

life, contrary to St. *Paul*, which ſeemeth ſomething Anti-Evangelical; The yoke of the Goſpel ſhould be eaſie.

And alſo, if thought fit, that none ſhould be condemned to dye upon a ſingle teſtimony, when there is no other kind of proof by circumſtances, or violent or vehement preſumptions, equivalent to a witneſs, that makes a kind of *ſemiplena probatio* at the leaſt, as in the Canon Law: *In the mouth of two or three witneſſes every ſaying ſhall be confirmed*, ſayes the Levitical Law; which is repeated in the New Teſtament, and in a manner at leaſt is made *Lex Evangelizata*. The Law-maker (Truth, Juſtice in the abſtract) could as well have ſaid, *In ore unius vel duorum teſtium*, as *duorum vel trium*, if he had thought it ſo fitting: and yet (as before) the Goſpel ſeems to pinch harder then the Law. To that Objection, That then many Malefactors would eſcape; it may be anſwered, That ſecret things belong to the Lord, and to him they are to be left, and that it is better ten Knaves ſhould eſcape, then one guiltleſs man ſhould be hanged. We have ſeen and heard, how even in a manner miraculouſly God hath often revealed murther and great crimes, that we may ſuppoſe, that when ſuch crimes cannot be in the ordinary way detected, it pleaſes God they ſhall be done extraordinarily. Many inſtances might be given of the ſad conſequences, by putting to death upon the teſtimony of a ſingle witneſſe: Judge *Forteſcue*, in his book *De laudibus legum Angliæ*, relates a paſſage about a Gentlewoman in *Sariſbury*, that was put to death, even burnt at a ſtake, for murdering her husband, and that ſentence given upon the teſtimony of a ſingle witneſs, which witneſs not long after upon his death, voluntarily and in a moſt penitent manner confeſſed, he had given falſe witneſs againſt that Gentlewoman, and that ſhe was no wayes guilty of that murther for which ſhe was put to death: And Judge *Forteſcue* there ſpeaking of the Judge that gave ſentence againſt her, hath theſe words, (as I take it, or to this effect, the book is not now by me) as they are there in the *Latine* verſion out of the Law-*French*; *Sæpius iſte judex mihi faſſus eſt, quod nunquam in vita ſua animum ſuum ſuper hoc facto purgaret.*

Againſt condemnation upon a ſingle teſtimony.

A notable inſtance this way (to relate no more, being numerous

merous) happened in *London* not many years ſince, as 'tis credibly reported: A young man, a Lawyers Clerk, made love to a Gentlewomans Chamber-maid, and a fellow-ſervant of the Chamber-maids, keeping company much with her, and the young man uſing alſo kind dalliance towards her, ſhe conceived that he loved her better then the Chamber-maid; but afterwards perceiving ſhe was miſtaken, ſhe boyled with revenge againſt him, and the Devil watching as a roaring Lion whom he may devour, inſtigated her to accuſe him of theft, that he had ſtoln from her Maſters houſe, and taken away under his Cloak a Silver Boll: Upon this bare ſingle teſtimony of hers the Jury found him guilty, he was condemned and dyed for it. Not long after the Chamber-maid, grieving for the loſs of her eſpouſed husband, ſeeing her fellow-ſervants Trunk or Box unlocked, lift up the Cover, and there ſaw that very Boll, which ſhe very well knew, for which the young man was condemned and ſuffered; ſhe calls up her maſter, who found it to be the ſame Boll, which ſhe, he ſhewing it to her, could not deny; upon this ſhe was proſecuted, condemned and ſuffered death; and the Chamber-maid fell mad with grief, and dyed: And all this came from this judgment upon the teſtimony of a ſingle witneſſe. Should any object, That this might happen upon the teſtimony of two or more witneſſes: It is poſſible, but not ſo probable; and the ſafe way is to follow the Rule afore-mentioned.

In the caſe of Treaſon two witneſſes are required, and very requiſite: and in other crimes, capital eſpecially when alſo in many caſes that are not capital two witneſſes are required, why might it not be reaſonably expected? though the atrocity of Treaſon is high, yet as to the perſon offending and ſuffering the puniſhment by loſſe of life is little different.

Touching Juries. And alſo, if thought fitting, that Juries of life and death, as alſo in other Actions both criminal and civil, ſhould be conſidered of, and better Juries impanelled then often are; and the Sheriff and Under-Sheriff, and other inferiour Officers power in impannelling ſuch Juries, be looked after.

40 *s. per annum*, as is touched above, was in the beginning of that Law or cuſtom of tryal by Juries, a good conſiderable eſtate, and ſo the perſons probably more conſiderable and knowing. They anciently uſed to be twelve Knights, ſo ſayes Sir *Edward Coke* in his Comment upon *Littletons* Tenures, citing Mr. *Lambert*. Many inſtances might be given of the ſtrange Verdicts given by ſome ſuch Juries, out of their ignorance, or wilfulneſs, or both; who oftentimes expreſly deny to follow the Judges directions, but go quite contrary: but I ſpare to inſtance them, in reverence to the Law under which I was born and live, and the practice thereof, both which eſpecially in moſt parts thereof, are very excellent. And we ſee what Pamphlets have been publiſhed by *John Lilburn*, if not by others too, affirming the power of Juries, not as is commonly held, to be onely in matter of fact, but in matter of Law too; and how they have controuled learned Judges in their Verdicts, and obſtinately carried it againſt them: and how the meaning of that Axiom, *Ex facto jus oritur*, hath been extremely rack'd. The meaning of *Legalis homo*, to qualifie him to be of a Jury, is not, nor formerly was, meant to be onely a man of 40 *s. per annum*, but to be at leaſt in ſome good meaſure *in legibus peritus*, as ſome are of opinion, and ſo as it were a kind of aſſiſtant to the Judge.

And alſo, if thought fitting, that new Laws ſhould be made upon emergencies and accidents, when they happen, and are notorious and publickly known, be the crimes never ſo heynous and horrid. Till they have happened it may be thought fit, not to make a prohibitory Law againſt them for the reaſon afore mentioned, *Nedum prohibent, jubent.* New Laws to be made upon new accidents.

As namely of making Eunuches of men or women. That caſe may be remembred of the Horſe-gelder in *Nottinghamſhire*, that ſpayed a young woman: and being a *caſus omiſſus*, the Judge could find it no more then a miſdemeanour. It hath been anciently forbidden by the Imperial Laws, and the puniſhment is capital. *Cod. de Eunuchis lib.4 tit.42. l.1.* Making of Eunuchs.

The ſtealing of a Winding-ſheet out of a Grave.

That abominable baſeneſſe of a woman and a Maſtiff-dog, not far from *Temple-bar London*, not many years ſince: Stealing of the Winding-ſheet out of the Grave.

if

if the Law be not plain enough in that caſe, that it may be amended.

Stealing of men, &c. The ſtealing of men or women, girles or boyes, by theſe extraordinary thieves called Spirits, or others, to be carried into remote Plantations, where probably their Parents ſhall never hear of them. Shall we provide good Laws againſt the ſtealing of our Cattel and our Goods, and not of our Children? Such kind of Plagiaries have been more taken notice of in other parts, and ſeverely puniſhed. St. *Paul*, 1 *Tim.* 1.10. amongſt thoſe againſt whom the Laws are made, reckons up the ἀνδραποδισταῖς, *Men-ſtealers.*

Againſt delays in Courts And alſo, if thought fitting, that a ſelect Committee ſhould be appointed to conſider of the dilatory proceedings in all Laws both Eccleſiaſtical and Temporal, delaying of juſtice being almoſt as bitter as injuſtice, and the promiſe is as well not to delay juſtice, as to do juſtice. Many inſtances might be given of delayes in juſtice, and perhaps none more then in actions upon the Writ of *Formedon*, eſpecially where there are many Copartners, which I have heard ſome Common Lawyers complain of.

Fees in all Courts. And alſo that ſuch a ſelect Committee ſhould conſider of Fees in all Courts, and to fix a ſettled rule for them, that onely ſuch may be taken as cannot juſtly be grievous to the Subject, and yet may be ſufficient for the Officers that receive them: due conſideration being had of their reſpective qualities, pains, charges, and all incidents and circumſtances concerning them; and of the great rates of all commodities, raiſed exceeding highly ſince the time that ſuch Fees were ſettled, eſpecially in Eccleſiaſtical Courts, 21 *H.*8. this hath always been a conſideration for the raiſing of Fees.

Againſt the non examining of witneſſes upon oath in the Defendants defence. And alſo, if it ſhall be thought fitting, that the practice of the Laws touching Non-admiſſion of witneſſes to be ſworn upon oath, in defence of the party proſecuted againſt by the King, ſhould be amended. And whether it ſeem not ſtrange to ſome, that *A. B.* being indicted at *London*, for killing *C. D.* at *Barwick upon Tweed*, in ſuch a place there, on ſuch a day, about ſuch time of the day; and the accuſed party endeavouring by the negative pregnant to defend himſelf, would prove, that

that that very day he was perhaps at St. *Michaels* Mount in *Cornwal*, about the ſame time of the day, and ſo could not be then at *Barwick*, and he produces ſufficient witneſſes upon this, yet they muſt not be examined upon oath; and why ſhould the Jury rather believe witneſſes without oath, then ſworn witneſſes, eſpecially when they hear no juſt exceptions againſt the ſworn witneſſes? which haply the Defendant cannot at leaſt upon an inſtant give, perhaps having not heard of them, till the very time of their production againſt him at his tryal; and the cauſe being heard ſo ſummarily as is uſual, and ſo exceeding ſmall time of defence given, that he cannot poſſibly enquire after them, to refute their teſtimony by juſt exceptions againſt them. The uſual anſwer is, Witneſſes muſt not be examined upon oath againſt the King, as though it concerned not the King as much to ſave a guiltleſs man, as to hang a guilty. It was accounted a good ſpeech of that *Roman* Emperor, that ſaid, *Mallem unum ſervare civem, quam decem occidere hoſtes.*

Againſt the examination of witneſſes in the hearing of one another.

And alſo, if it be thought fitting, that witneſſes ſhould not be examined, as uſually they are at our common tryals, both in civil and criminal cauſes, openly in the hearing of one another; when it is to be feared that it hath happened ſometimes, that the craftieſt witneſſe has been put on to ſpeak firſt, and he hath thereby given aim dangerouſly to the reſt.

Should any object that in ſuch ſummary proceedings it cannot well be otherwiſe: May it not be anſwered, that 'tis to be feared there may be more haſte then good ſpeed? and they might be examined privately and apart, not in the hearing of one another, even in ſuch ſummary cauſes, almoſt in as ſhort time, and according to the courſe of the Civil Law, that examines ſo apart; their teſtimonies, when all taken, might be publiſhed, and if need be even in their own preſence, to confirm them *viva voce*. *Daniels* hearing of the cauſe 'twixt the two Elders and *Suzanna* ſeems to be ſummary, and yet he takes that courſe: had he not done ſo, probably it had gone hard with *Suzanna*; for it ſcarce can be ſuppoſed, but if the two Elders had been examined in the hearing of one another, they would have jumped in their teſtimony, and not varied;

as

as they did in the ſpecies of the Trees; no doubt the latter would have concurred with the former.

That perſons wrongfully accuſed may have reparations from the accuſer.

And alſo, if it be thought fit, that though the parties be accuſed in the Kings behalf, as commonly they are in caſes of Extortion, or other crimes or offences; yet if upon the traverſe they defend themſelves, and prove themſelves to be guiltleſs, they ſhould have due reparation, both in point of reputation, and trouble, and charges, from the party that cauſed them to be ſo indicted; otherwiſe 'tis very poſſible and probable, eſpecially in point of ſuppoſed Extortion, for any man to be undone, when one or many, malitious or ignorant men, or both, may ſo, and very often indict any man, who, though he prove himſelf never ſo guiltleſs, and that it is no extortion but that the accuſer was miſtaken, and that it proceeded from his ignorance or malice, or both: yet he ſhall have no reparation, and it is well known that ſome ſo indicted, could have proved themſelves guiltleſs, but knowing it was very chargeable, and to have juſtified themſelves ſo often, as ſome malicious or ignorant men would have indicted them, would have quite ruined them in their fortunes; therefore to prevent that, have betrayed their own innocence, confeſſed themſelves guilty of the accuſation, and paid the Fine or Mulct, as many degrees eaſier: This is hard, *Crudelis eſt ſibi ipſi, qui famam ſuam negligit*; what then, *qui prodit?* May it not be enquired then, if it be not fitting, that both a more eaſie and leſs chargeable courſe might be taken upon the traverſe, and alſo that the guiltleſs accuſed party ſhould be duly repaired both in reputation, and in charges and trouble? though I am not ſo rigid as to think upon a *Lex talionis*, but in ſome few ſpecial caſes.

That the Act for aboliſhing the Court of Wards and Tenures may be repealed.

Alſo, if it be thought fitting, that the Tenures and Privileges taken away from His Majeſty, in that Act of aboliſhing of the Court of Wards, and the Wardſhips alſo ſhould be reſtored, (onely if any abuſes have been crept in, in the execution, they may be regulated and amended) as that very able and moſt induſtrious Gentleman, *Fabian Philipps* Eſquire, hath learnedly and fully ſet forth in that book of his on that ſubject, entituled, *Tenenda, non tollenda*, or the neceſſity of preſerving Tenures

tures *in capite, &c.* and if it ſhould be thought fit ſtill to continue the abolition of Wardſhips, &c. whether the Tenures notwithſtanding ſhould be continued? and whether a fitter retribution to His Majeſty ſhould be made, then by Exciſe of Ale, &c. I need ſay no more of this, but let Mr. *Philipps* book plead for it.

Rates to be ſet upon ſome Commodities for the ſale of them.

And alſo, if it ſhall be thought fitting, that upon many more commodities then are yet, the known rate and value of what they ſhould be ſold for, ſhould by indifferent and knowing men be ſet down, conſidering the great hurt done by ſelling many commodities at unreaſonable rates, upon ſome accidental ſtraits, in regard of ſome accidents of time, place or perſons; and many impoſing upon the unskilful and unwary buyer very often, as is notorious, demanding more then double the price they will take. In forreign parts, both upon books and other commodities, fitting rates are by Authority ſet down, whereby the ſeller may have a juſt gain, and the buyer not be over-reached. *Certum quid* is the great ſatisfaction to the Subjects, as in Fees certain in all Courts, ſo at leaſt in many commodities.

About dignity and precedency.

Alſo, if it be thought fit, that in point of dignity and precedency, a fixt certain plain rule might be ſet down; which probably would take away much emulation and grudging, and quarrels oftentimes, amongſt many, if it were clearly once determined: And amongſt others, if it were ſo determined, who ſhould have precedency, the eldeſt ſon of him whoſe father was a Knight, and the firſt Knight of the Family; or the eldeſt ſon of him whoſe father was but an Eſquire, but the eldeſt ſon of a Knight, Senior to the Knight, father of the former, or whoſe Grandfather or direct Anceſtor from whom he is lineally deſcended, and is eldeſt ſon and heir, was a Knight: the ſecond conceiving it is his right, in regard he is the direct deſcendant and heir to the Senior Knight.

And that, if it ſhall be thought fitting, no perſon that bore Arms againſt the late King, or His Majeſty that now is, or had any pretended Commiſſion or Authority ſo to do, ſhall own the Title of General, Lieutenant General, Major General, Commiſſary General, Colonel, Lieutenant Colonel, Ma-

jor, Captain, Lieutenant, Cornet, Enſign, or any other Title, by reaſon of any ſuch pretended Commiſſion or Authority; nor any perſon ſhall ſo call them by any ſuch Title under pain of a great Mulct *toties quoties* to be inflicted, both upon the perſon that owns ſuch Title, and on the perſon that gives it, or ſo calls them. *Nemo ex delicto conſequatur beneficium*; and ſo bad a cauſe ought not in any implicite manner to be approved; and rightly conſidered, 'tis an infamy to the parties to be called ſo.

Againſt the Act of limitation of actions in ſome caſes.

And alſo, if it be thought fitting, that in regard that many, who took the Kings part in the late wars, could not have their right of ſuing for their own juſt due debts, owing them and contracted either before the wars, or in the time of the wars, in the Courts of Juſtice then in being; ſo that ſix years were elapſed, according to that Act of 21 *Jacobi* 16. touching limitation of Actions, and ſo they are thereby excluded to their great impoveriſhment. There ſhould be an abrogation or ſuſpenſion of that Act, ſo as to give remedy in this caſe, that the ſpoiled may have reparation or retribution of juſtice, (if not reward) for his Loyalty.

Againſt multiplicity of Statutes upon one and the ſame ſubject.

And alſo, if it be thought fit, that where Laws are doubtfully penned, they may be explained, and where there are multiplicity of ſeveral Statutes touching the ſame ſubject, ſome repealing part of a Statute, ſome enlarging and altering, ſo that the true meaning of the Statute becomes difficult and perplexed, that in ſuch caſes all the ſaid Statutes ſeveral ſo concerning the ſame ſubject, may be repealed, and one plain and clear Statute thereof to be made; as namely theſe ſeveral Statutes in the Reigns of King *Edward* 6. Queen *Mary*, Queen *Elizabeth*, King *James*, and King *Charles* I. touching the prohibition of eating Fleſh in *Lent*, and other Fiſh-dayes, and concerning Faſting-dayes, may be ſo repealed and made void; and one Statute made, clearly and plainly to comprehend all that is neceſſary upon that ſubject.

Touching

Touching Ecclesiastical Persons, Courts and Causes.

SOme have wished, if it were thought fit, that now the Lords Spiritual the Bishops being restored to their right in the Lords House, that the Clergy should have their Proctors to sit in the House of Commons, (if they desired it) representing the body of the Clergy, as they used to do till about *Henry* the sixths time, or not long before, as it was then used, since which time it hath been disused. Some have affirmed, that a Clergy-man of competent temporal estate, having in King *James's* time been chosen Burgesse for a Corporation, was not suffered to sit there, nor a Clergy-man to say Prayers there. Nor will some yield they can vote to chuse a Parliament-man, either in County or Borough: so little of representation have they; and yet when in Convocation they give the King Subsidies, their grant must be confirmed by Act of Parliament. Anciently such care was taken that Bishops should be present in Parliament, that in their absence their Chancellors were summoned to sit there.

The Clergies Proctors in the House of Commons.

Also, if it be thought fit, that whereas before the dissolution of Monasteries, the Bishops had power to augment poor Vicaridges out of the Tithes of Impropriations, so they are now commonly called, though the true name is Appropriations, the Tithes having been appropriated to some Monastery or Religious house or other, before the dissolution, and after that falling into Lay-mens hands, who held them improperly, living by the Altar and doing nothing there, got the Nick-name of Impropriators and Impropriations, which now holds good; such is the tyranny of Custom in this and many other cases. Or if there were no Vicaridge endowed, the Bishops might endow one, nay, and go so far as to leave to the Appropriator (which then was that Religious house to which it was appropriated, who then thought themselves as worthy to be kindly used, as a man would think our Lay-

About augmentation of Vicaridges.

Impropriators can do now) not much more then a 50. part of the Tithes, or thereabout.

Againſt Menſals. It ſeems hard that the Lay-Impropriator ſhould have a matter of 200. or 300 *l. per annum*, or more, and the poor Vicar a matter of 20. Marks, or 20. Pounds, or thereabout; and hardeſt in Menſals, that is, as it was uſual, when a Religious houſe could procure from the Patron the right of Preſentation to ſome Living near their Monaſtery, whither one of their Monaſtery might repair to officiate, and return home to his D'orter at night; then they often procured theſe Livings from the Popes, to be annexed and appropriated to their Houſe, *ad ſupportandam menſam*, thereupon called Menſals, the Cure to be ſo diſcharged by one of their Houſe, and no Vicaridge to be endowed, and all the Tithes and profits to come to the Monaſtery. And thus it ſtood at their diſſolution, and ſuch ſmall care was taken, that ſo they came into Lay-mens hands, who allow them ſomething or nothing as they pleaſe, ſome inconſiderable ſmall Tithes, or ſome pety ſmall penſion of 5. or 6 *l. per annum*, or ſometimes ſomthing more or leſſe.

Near Market Towns and great Towns commonly were one or more Monaſteries ſcituared, and the Abbots and Priors ordinarily got all or the moſt of the Livings in ſuch Towns for Menſals, as before: ſo that wee ſee them at this day ſuch pittyful ſmall things as they are, and *tenuitatem beneficiorum neceſſariò ſequitur ignorantia clericorum*: and in ſuch Market Towns to ſupply the Vicar or Curate, Lecturers are taken in, and they muſt live of the benevolence of the people, which is uſually, or at leaſt amongſt many of them more or leſſe, as the Lecturors preaching pleaſes them; ſo he muſt humour their fancies or faſt. And there muſt be a Lecture-day commonly on the Market-day too, that the Countrey people coming thither may drink in his Doctrine; which oftentimes has been very ſtrange, and what the conſequence of this has been, we have ſadly felt of late years, being not the leaſt cauſe of our miſeries; God grant it may be prevented for the future.

It is alledged, that the power of the Biſhops in uſe and practice

practice before the diſſolution of Monaſteries for augmentation and endowment of Vicaridges is taken away, theſe Impropriations being turned into Lay-fees. Yet, I humbly conceive, *(ſalvo meliore judicio)* that the King had no more transferred upon him, then what the Abbots and Religious perſons had: *Nemo dat quod non habet. Nemo plus juris in alium transferre poteſt, quam ipſe habuit. Reg. juris.* Nor was more transferred to the poſſeſſors or their Anceſtors, then what the King had: If ſo, then what was legally done in ſuch caſes, by the Biſhops before the diſſolution; why may it not now be done too? and yet ſome moderate remedy ſhould be found for the purchaſers, eſpecially thoſe that have ſo long enjoyed them; and the Biſhops, Deans and Chapters, and others, namely the Biſhop of *Lincoln*, who had very many great Mannors taken from his Biſhoprick, which are at this day in Lay-mens hands, and a competency, ſuch as it is, made up to him, almoſt, altogether out of ſmall Impropriations. He and others ſhould be duly conſidered, and not detrimented hereby.

Touching the bounds of Juriſdiction Eccleſiaſtical and Civil.

And alſo, if it ſhall be thought fit, that the bounds of Juriſdiction Eccleſiaſtical and Temporal, may be clearly ſet down and fixed, to take away all matter of contention, that for want of it may ariſe; ſo that probably as few prohibitions as may be, need be ſued forth. But as they now are two Siſters, under one and the ſame Crown, ſo they may live peaceably and friendly for ever.

The Ordinaries power about diſtribution of Portions, &c.

And alſo, if it be thought fitting, that whereas the Ordinary, according to Law and long practice, hath diſtributed portions to the widow and children upon Inteſtates goods, upon the Adminiſtrators giving up their Accompts to him, for which they enter Bond upon their taking out of Letters of Adminiſtration, which diſtribution and bonds, and bonds taken for performance of Wills, are by ſome excepted againſt: that that and all other juſt powers of the Ordinary may by Act be ratified.

Againſt concurrence of Juriſdiction, Peculiars, &c.

And alſo, if it ſhall be thought fitting, that for the quiet and eaſe of the Countrey, and in regard ſometimes of the inconvenience and diſorder in the execution of Juriſdiction Ec-

Eccleſiaſtical, no peculiar Juriſdiction, nor concurrency of Juriſdiction be ſuffered, (the parties that have Intereſt therein to be otherwiſe ſatisfied.) The inſtances of the inconveniences of ſuch peculiar and concurrent Juriſdiction may be given, but I forbear leſt I might ſeem partial.

All Wills, &c. proved at *London* from remote Counties, to be tranſmitted into the ſeveral Counties.

That all Wills, Inventories, Bonds for Adminiſtrations and Accompts, and other proceedings touching them, which in the late Uſurpation were out of all places brought to *London*, and no Record thereof in the County or Dioceſe, where the deceaſed dyed; ſo that the Subject is put to great trouble and charge, ſending to *London* when he hath occaſion to uſe any of them, and may be forced to ſue at *London* when he would recover his right thereupon.

That all ſuch Wills, Inventories, Bonds, Accompts, and all other proceedings concerning the ſame, or true copies thereof, to be made valid and authentick by Act of Parliament, be tranſmitted at the charge of the Regiſter at that time, into the Regiſtry of the Biſhop of that Dioceſe, where the party deceaſed dyed, or had his principal manſion or dwelling houſe at the time of his death, or rather in regard of the largeneſſe of ſome Biſhops Dioceſes, including many Archdeaconries and many Counties, they ſhould be ſo tranſmitted into the reſpective Regiſtries of every Archdeacon or Commiſſary of the ſaid Archdeaconry, and that every perſon concerned may ſue for their right thereupon before the Biſhop of the Dioceſe or his Chancellor, or ſuch Commiſſary or Archdeacon, or his Official.

During the late troubles the Epiſcopal and Archidiaconal power having been *de facto* aboliſhed or ſuppreſſed, the Subjects have been forced to their great charge and trouble, to prove all Wills, and take Adminiſtrations, &c. at *London*, before Commiſſioners or pretended Judges there for proving of Wills, and granting of Adminiſtrations, &c.

Degrees of Marriage.

That the Act of 32 *H.*8. about the prohibited degrees of Marriage, be by Act of Parliament explained.

Traytors heads.

That the late Traytors Heads and Quarters, of the Murtherers of our late Soveraign, of bleſſed memory, and the others, that are ſet upon wooden ſtakes, ſhould be ſet upon Iron pikes

pikes or ſtakes, as *Piercy* and *Catesby's* Heads were upon the Parliament Houſe.

Touching the ſuppreſſing of all Books and Writings, publiſhed againſt the Regal Rights, or the Right of the Subject.

SOme have adviſed, if it be thought fit, that a moſt choice and able Committee be appointed to enquire after all Books and Writings whatſoever, which have ſpoke againſt the Regal Right, or the Right of the Subject; that they may, as many as can be got, either be purged or burnt, and declared againſt by Authority, and not remain as apt fuel for a new flame, but be buried as far as can be in perpetual oblivion. And perhaps in the firſt place, as moſt peſtilent, thoſe Tracts that have been writ about that ridiculous contradiction *in adjecto* of the two Houſes coordination with the King the Monarch, when, as before is ſpecified, the King is the Head, the Lords Spiritual and Temporal, and the Commons, the three Eſtates, by ſeveral Acts of Parliament ſpecified, *Lippis & tonſoribus notum:* yet urged for deſigns miſchievous abominably, as we have felt. *About the ſuppreſſion of ſeditious books.*

As alſo that trayterous diſtinction of the *Spenſers*, 'twixt the Kings Perſon and Office, by two Acts of Parliament declared Treaſon; yet in theſe late times maintained by too many. *Spenſers Treaſon.*

Goodwins book for the juſtification of the murther of the late King, and many other of that kind. *Goodwins book juſtifying the murther of the King.*

Mr. *Bucks* book of *Richard* the third, wherein he ſeems to impugne the right of the King from the daughter of King *Edward* the fourth, wife to King *Henry* the ſeventh, too much leaning to, if not affirming *Richard* the thirds right, by that monſtrous Act of Parliament that illegitimates *Edward* the fourths iſſue. *Mr. Bucks book of Richard 3.*

In Sir *Edward Cooks* book entituled, *The third part of the Inſti-*

Sir Edw. Cooks Writings.

Inſtitutes of the Law of England, *concerning High Treaſon, and other Pleas of the Crown*, 1658. Printed at *London* by *M. Fleſher* for *W. Lee* and *D. Pakeman*, §. *Le Roy*, *pag.* 7. he puts it down there for Law upon the Statute of 25 *E.* 3. *c.* 2. *De proditionibus*, That *if Treaſon be committed againſt a King* de facto, *and* non de jure, *and after the King* de jure *cometh to the Crown, he ſhall puniſh the Treaſon done to the King* de facto, *and a Pardon granted by a King* de jure, *that is not alſo* de facto, *is void.*

Strange would have been the conſequence of this, if *Cromwell* had been made King, as ſome deſired, and a loyal man ſhould have killed him in order to the reſtitution of the true King *de jure*, our dread Soveraign King *Charles* the ſecond: Or ſhould a loyal man for the ſame end have killed him, though he had but *(& de facto, non de jure)* the title of Protector, how far would that have extended by the words in the ſame §. may be conſidered, where he ſayes, that Statute of *E.* 3. is to be underſtood of a King regnant, and as follows there, and as he ſayes moſt truly, a Queen regnant is within theſe words, *Noſtre Seigneur le Roy*; for ſhe hath the Office of a King. So perhaps it deſerves to be examined, whether ſome of note and power, in the time of *Cromwells* Uſurpation, did not affirm that *Cromwell* was within theſe words, *Noſtre Seigneur le Roy.*

In regard Sir *Edward Cooks* Writings are by many held in high repute, and ſome have not ſtuck to ſtyle him the *Oracle of the Law*; therefore his Writings require to be more ſtrictly looked into, and that if any errors be found therein, they may be detected and expunged, as being more dangerous, then in other mens Writings not of ſo great repute: *Corruptio optimi eſt peſſima.*

Illegal and ſeditious ſpeeches.

Alſo it was adviſed, if it ſhall be thought fit, that ſuch Speeches as have been publickly made by any Judges or noted Lawyers upon the Bench, or in any publick Aſſemblies, againſt the Regal or Subjects Right, or the Law of Nations, which may give juſt offence to our Neighbours, may be taken notice of, and publickly declared againſt: Such us that, when that Act of 25 *E.* 3. was alledged, to juſtifie *Cromwells* Uſur-

Uſurpation, and that *Seigneur le Roy* in that Statute included *Cromwell* the uſurping Protector. And that ſpeech of a great Lawyer at the tryal of the *Portugal* Ambaſſadors brother, when it was alledged that he was by the Law of Nations to be ſent back *cum poſtulatu* to his Maſter the King of *Portugal*, to be by him puniſhed for his offence committed here, and that that Commiſſion for trying him here, without the conſent of the *Portugal* Ambaſſador, was the firſt Commiſſion that ever was granted here to try any Ambaſſador or his ſervant, without the Ambaſſadors conſent. Even the Biſhop of *Roſs*, Ambaſſador from *Mary* Queen of *Scotland*, though ſhe was *de facto* depoſed, or forced to renounce the Crown there; when he had committed a great offence, yet was onely diſmiſs'd, and not further queſtioned. But to all this and much more that Lawyer replied, *What have we to do with the Law of Nations, if it be contrary to the Law of England?* One pretended afterwards to excuſe him, and that he ſpoke but according to the words in the Statute of 21 *H.*8.21. where it is ſaid, *We are free from any ſubjection to any mans Laws, but onely to ſuch as have been deviſed, made and ordeined within this Realm for the wealth of the ſame, &c.* which words are intended againſt the Papal Uſurpation impoſing Laws upon us.

The illegal Preface to the Propoſitions at the Iſle of *Wight*.

As alſo, if it be thought fitting, that that Preface to the Propoſitions ſent by the Houſe to the late King at the Iſle of *Wight*, which ſeem to ſtrike at, if not to take away the Kings Negative voice in Parliament, expreſly contrary to many Acts of Parliament, the Kings moſt known Prerogative, and the moſt known Cuſtom and Law of the Land; be declared illegal and derogatory to His Majeſties Prerogative, and juſt right.

Rectifying of tranſlation of ſome words.

As alſo, if it ſhall be thought fitting, that the tranſlation of the *Greek* word ὑπερεχούσαις in *Rom.*13.1. to *higher powers*, altered to the *ſupreme powers*; for ſo ὑπερέχοντι, 1 *Pet.*2.13. is tranſlated, *whether to the King as ſupreme.* The two Houſes, and Powers inferior many degrees to them, have by ſome been interpreted to be meant by higher powers, and ſtrangely hath it been wreſted, if not excluſive of the King.

As alſo, if it ſhall be thought fitting, that that expreſſion

Illegal Declaration.

about the time of His Majeſties coming over, in one of the Declarations or Remonſtrances, that the *Government was by the King, Lords and Commons*; being derogatory to His Majeſties Prerogative and Legiſlative power, and the Government being in him radically, and but derivatively and ſubordinately in any others, for and under him: Therefore to be conſidered of, altered and amended.

The Printing-preſs.

As alſo, if it ſhall be thought fit, that the Preſſe be carefully looked into, that no ſeditious Books or Pamphlets be vented, to poyſon the people, or to confirm any in their bad principles. The want of this care hath grown into a great Seminary of miſchief, which if nothing but our ſad experience of it, ſhould make us more wary for the future.

A body of the Law to be framed.

As alſo, if it ſhall be thought fit, that (according as was begun by the late Lord Chancellor, the Lord Viſcount *St. Albanes*, which as 'tis ſaid King *James* put him upon) a Body of the Laws ſhould be digeſted and compiled, and then by authority of Parliament be ratified.

Further touching Eccleſiaſtical matters.

Eccleſiaſtical Courts to be Courts of Record.

The Eccleſiaſtical Courts proceeding according to His Majeſties Eccleſiaſtical Laws, ſitting under the ſame Crown with all other Laws, ſome adviſe, if it ſhall be thought fit, that to all intents and purpoſes of Law they ſhould be Courts of Record, as well as any other Courts.

Reading the Articles of Religion.

By the Statute 31 *Eliz. c.* 12. the Incumbent is to read the Articles of Religion within two moneths after his Induction: and 'tis ſaid, ſome have not taken Induction at all, becauſe they would not read the Articles. Had the Statute limited it within that time after Inſtitution, it had met with that fallacy.

Signing with the Croſs in Baptiſm.

In the form for Private Baptiſm, when the child privately baptiſed is afterwards brought to the Church to have the Baptiſm publiſhed, at the receiving the child then into the Congregation there is no Interrogatory, whether in the private Baptiſme it had been ſigned with the ſign of the Croſſe, (as commonly, if not altogether they are not;) neither is there

there any mention then at the publiſhing of the Baptiſme, of ſo ſigning it. And it hath been found, that ſome perſons have pretended weakneſſe in the Infant, when it was not ſo, onely to avoid the ſigning of it with the Croſſe.

There being no Law that allowes private Churching of women, it is wiſhed it might be alwayes publick in the Church, and with a Vail: and if within the moneth the woman be not able to come to Church, to defer it till the recovery of her health. Churching of women privately.

In Cathedral and Collegiate Churches uſually one of the Singing-men (though in orders) gives the Abſolution, and the Bleſſing at the end of Service; which ſome wiſh might be done by the Biſhop if preſent, or Dean, or ſome Dignitary, or more eminent perſon preſent. Touching Abſolution.

And that the Anthems and other parts of the Service, which are performed ſinging, or in a ſinging tone, may be made more intelligible to all the Auditors; who many of them are ſcandalized by the contrary, which might be helped by ſome ſmall alteration in the compoſure: ſo that (as ſometimes was practiſed, and that without any hinderance to the harmony) firſt one of the Singing-men to declare out of what Chapter and Verſes, or part of the Scripture, that Anthem is taken; or what Hymn or Spiritual Song it is: and then immediately before the ſinging each Verſe, with a clear audible voice to read it. This would help much, but the beſt way were, that the Singing-men and Choriſters were taught exactly to ſing moſt articulately, clearly and plainly, and not to drown the words in their mouths that they cannot be underſtood; but openly and diſtinctly ſound forth every ſyllable, that they might be as well or better underſtood, then when they onely read them. And this hath been moſt commendably done by ſome expert Artiſts that way, and might by all: Mr. *John Froſt*, late *Weſtminſter*, and one of the Gentlemen of His Majeſties Chappel Royal, gave a moſt clear and moſt deſervedly worthy to be imitated precedent hereof; then whom never any man read more plain and clear, and yet what he ſung was (if poſſible) more plain and clear then what he read.

Touching the Writ *De excommunicato capiendo.*

By the Statute for the tryal *De Excommunicato capiendo*, the person excommunicate is to be publisht in his Parish Church, which sometimes the Minister refuses, or there is no Minister: In which case 'tis wisht it might serve to have it fixed upon the Church dore upon the Lords day, or a copy left at his dwelling house, and the forty dayes to commence from that time.

FINIS.

A Table of the Particulars contained in the Notes touching alteration of ſome Laws.

	Page.
Touching Parliament proceedings.	97
Ordinance of Parliament	ibid.
Privilege of Parliament.	ibid.
The Biſhops Proteſtation.	98
The King none of the three Eſtates.	ibid.
Proceedings of the Houſe of Commons.	99
Age of Parliament-men.	102
Election of Parliament-men.	103
The great number of Boroughs and Corporations.	ibid.
Touching the manner of proceeding in Parliament.	104
A competent number of Parliament-men to be at every debate.	107
The manner how it may be conſtantly obſerved.	ibid.
Fees of the Officers of Parliament.	108
Touching new Laws.	ibid.
Acts of Oblivion, &c.	109
Reſtitution of ſome goods where the property is not altered.	110
Reparation to perſons ſpoyled.	111
Touching the Long Parliament.	ibid.
The keeping the Records of the Tower.	113
The Militia.	ibid.
Oaths of Allegeance and Supremacy explained.	ibid.
Robbery the Law to be altered.	114
Againſt condemnation upon a ſingle teſtimony.	115
Touching Juries.	116
New Laws to be made upon new accidents.	117
Making of Eunuchs.	ibid.
Stealing of Winding-ſheets.	ibid.
Stealing of men.	118
Againſt delayes in Courts.	ibid.
Fees in all Courts.	ibid.
About examination of witneſſes in defence.	ibid.
Againſt the examination of witneſſes in the hearing of one another.	119
Reparation to perſons wrongfully accuſed.	120

The

The Act touching the Court of Wards and Tenures to be repeated. 120
Rates to be set for buying commodities. 121
About dignity and precedency. ibid.
Against the Act for limitation of Actions. 122
Against multiplicity of Statutes upon the same subject. ibid.
The Clergies Proctors in the House of Commons. 123
About augmentation of Vicaridges. ibid.
Against Mensals. 124
Touching the bounds of Jurisdictions. 125
The Ordinaries power about distribution of portions. ibid.
Against concurrence of Jurisdictions. ibid.
Wills to be transmitted into the several Counties. 126
Degrees of Marriage prohibited. ibid.
About the suppression of seditious books. 127
Spensers *Treason.* ibid.
Goodwins *book.* ibid.
Bucks *book.* ibid.
Sir Edward Cooks *writings.* 128
Illegal and seditious Speeches. ibid.
The illegal Preface to the Propositions at the Isle of Wight. 129
Rectifying the Translation of some words. ibid.
Illegal Declarations. 130
The Printing-press. ibid.
A body of the Law to be framed. ibid.
Ecclesiastical Courts to be Courts of Record. ibid.
Reading the Articles of Religion. ibid.
Signing with the Cross in Baptism. ibid.
Churching of women privately. 131
Touching Absolution. ibid.
Touching the Writ De excommunicato capiendo. 132

FINIS.